88- 1798

No. 88 -

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ROLAND E. HEMON,
Petitioner,

v.

OFFICE OF PUBLIC GUARDIAN, et al.
Respondents

PETITION FOR WRIT OF CERTIORARI

TO THE NEW HAMPSHIRE SUPREME COURT

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Dover, N.H. 03820
(603) 742-1879
for Petitioners

April 10, 1989

QUESTIONS PRESENTED

A. Listed below are the questions prepared by attorney Scott Innes, 37 Salmon St., Manchester, N.H., 03104, (603) 669-5000 for the petitioner in the NOTICE OF APPEAL timely filed July 21, 1988 with the N.H. Supreme Court and docketed as # 88-274. The attorney Scott Innes was instrumental in achieving the release of the petitioner from the N.H. Strafford County House of Corrections by having the phrase **" freely and voluntarily "** eliminated from the signing process:

1. Did the Strafford County Superior Court abuse its discretion in finding the defendant to be in civil contempt of Court for refusing to sign 3 deeds that contained attestation clauses which required the defendant to swear that execution of those deeds was his free and voluntary act when the Court knew full well that such act would be neither free nor voluntary? (See Page 9, N.H. Constitution, Part 1, Article 4th, Rights of Conscience Unalienable and Article 5th,

Religious Freedom Recognized)?

2. Did the Strafford County Superior Court commit error and/or abuse its discretion in finding on June 21, 1988 that the defendant had exhausted all of his appeals with regard to the underlying decision in # 85-E-155 when defendant had filed a timely Motion for Reconsideration with the New Hampshire Supreme Court (Docket # 87-363, Motion denied, June 29, 1988)? (The Motion was denied on the very day, that the petitioner was released from the Strafford County House of Corrections, therefore his whole stay in the Strafford County House of Corrections was while the Motion for Reconsideration was pending.).

3. Was the defendant's conduct in refusing to comply with the orders of the Strafford County Superior Court on June 21, 1988 of such a nature as to constitute a threat that immediately imperiled the administration of justice? (In refusing to comply with the orders the petitioner was complying with N.H. Constitution, Part 1,

Article 10th, Right of Revolution, Page 10).

4. Did the Strafford County Superior Court abuse its discretion in forming its order of contempt of June 21, 1988 in such a fashion as to impose a period of imprisonment upon the defendant for non-compliance when in the very same order the Court created a less onerous mechanism through which a commissioner was appointed to sign these same deeds in behalf of and in the name of Roland E. Hemon, but only after the defendant had served a minimum sentence of 5 days? (See **A6.** The petitioner believes, that because there was at least one viable legal alternative, that incarceration was abusive, unusual, and cruel punishment and thus in violation of U.S. Constitution, Article 8th, Page 13, and N.H. Constitution, Part 1, Article 33rd, Page 11, and Article 10th, Page 10.).

5. Did the Strafford County Superior Court abuse its discretion in finding the defendant to be in civil contempt, based upon plaintiffs' Motion for Contempt, for refusing

to abide by the Court's order of July 23, 1987 when plaintiffs had not done what was required of them under the order either? (U.S. Constitution, 14th Amendment, the equal protection of laws clause.).

6. Did the Strafford County Superior Court abuse its discretion (commit an error of law) when it imprisoned the defendant for a civil contempt whereby he could not regain his freedom unless he complied with all prior Court orders, including one order which required him to pay the plaintiff her taxable costs and expenses (Order Strafford County Superior Court July 23, 1987 Par. 5) when the plaintiff had failed to present the affidavit ordered, to the Court or defendant thereby making it impossible for him to clear what the Court called civil contempt? (See U.S. Supreme Court # 88-1199, **A10.** The petitioner believes, that this too resulted in incarceration that was abusive, unusual, and cruel punishment and thus in violation of U.S. Constitution, Article 8th, Page 13, and N.H.

Constitution, Part 1, Article 33rd, Page 11).

7. Did the entry, form and/or effect of the order of June 21, 1988 whereby the defendant was imprisoned deny him his rights to Due Process, Equal Protection and Liberty under Part 1, Articles 1, 2, 14, and 15 of the New Hampshire Constitution and the 5th and 14th Amendments of the United States Constitution? (See Pages 9, 10, 12, and 13).

8. Did the entry, form and/or effect of the order of June 21, 1988, whereby the defendant was imprisoned, constitute cruel and unusual punishment under the United States Constitution? (See Page 13).

9. Did the Strafford County Superior Court abuse its discretion in ordering that the defendant be imprisoned for contempt until he performed certain acts which he could not possibly perform while imprisoned? (Cruel and unusual punishment again and while the Motion for Reconsideration was still pending in the N.H. Supreme Court in # 87-363, Superior Court # 85-E-155 pertaining to this matter).

10. Did the Strafford County Superior Court commit error, or abuse its discretion in creating an order of contempt, by which the defendant was imprisoned, which made his release contingent upon an adverse party certifying to the Court that he had complied with the balance of the order?

B. Questions other then those propounded by Attorney Innes and directed to the N.H. Supreme Court and declined and denied as the case may be:

1. Perjury is rampant throughout the legal proceedings as found in the record and transcript of certain key witnesses. The petitioner has vainly tried to have this addressed by the state courts by filing an **INFORMATION** never acted upon, **BILL IN EQUITY** dismissed for being " **frivolous** " (U.S. Supreme Court # 88-1199), Motion for Declaratory Judgment (never acted upon), the offer to pay for a **MASTER** to investigate the charges (never acted upon), as well as many

oral and written assertions to the point aimed at having N.H. RSA 641:1 (See Page 8) and N.H. RSA 625:8,V (See Page 9) enforced and thereby reverse the whole process by destroying its false perjurous base.

Did the state courts abuse their discretionary powers as well as act arbitrarily, capriciously, unreasonably, illegally and unconstitutionally in ignoring this perjurous base and thus in effect deny the petitioner his right to equal protection to laws and due process as guaranteed by the 14th Amendment of the U.S. Constitution?

2. Did the state courts abuse their discretionary powers as well as act arbitrarily, capriciously, unreasonably, illegally and unconstitutionally, when they denied the petitioner two Motions for Summary Judgment pursuant to N.H. RSA 491:8(a) (See Page 8) when the opposition filed inadequate affidavits containing inaccurate and perjurous statements instead of fulfilling the stringent requirements as required by law, and when the

New Hampshire Case Law was in full and unequivocal support of these requirements, and thus in effect deny the petitioner his right to equal protection to laws and due process as guaranteed by the 14th Amendment of the U.S. Constitution?

3. Did the state courts transgress against a person's right to be secure in person, property, effects, and papers as guaranteed by N.H. Constitution, Part 1, Article 2nd (See Page 9) and the U.S. Constitution Amendment 4 (See Page 12), by unnecessarily prolonging litigation by violating N.H. RSA 491:8(a), supra, and N.H. Case Law and therefore committing an error of law, and in the process abusing its discretionary powers, and acting arbitrarily, capriciously, unreasonably, illegally, and unconstitutionally?

4.If the U.S. Constitution, N.H. Constitution, state and federal statutes, Superior Court rules, truth, facts, logic, reason, and evidence are ignored, such that

the state courts commit errors of law, abuse their discretionary power, and act arbitrarily, capriciously, and unreasonably, does this constitute a judicial conspiracy of the state courts to arrive at and try to justify, and enforce a pre-determined judgment despite its negative affects and effects on civil rights and especially the equal protection and due process clauses of the 14th Amendment of the U.S. Constitution?

5. Did the state courts in committing errors of law, abusing their collective discretionary powers, and acting in general arbitrarily, capriciously, and unreasonably in the process of creating an ever lengthening list of aberrations, demonstrate rank tyranny and oppression by making litigation unnecessarily onerous, intimidating, and harassing and thereby inflicting consistent intentional emotional distress, mental anguish, and frustration such that the case would be settled by bankruptcy of funds and illness of the petitioner, violate the 4th

Amendment of the U.S. Constitution to be secure in one's person, papers, effects and property, as well as N.H. Constitution, Part 1, Article 2nd?(See Pages 9 and 12).

6. Did the state courts by instituting, approving, and condoning incarceration in order to force " **freely and voluntarily** " signing of documents against religious, moral, and ethical beliefs of the petitioner, violate the 1st Amendment of the U.S. Constitution by in effect trying to establish its own secular religion consisting of its own moral and ethical principles antithetical to those held by the petitioner and taught to him since childhood and scrupulously adhered to in adult life?

7. Did the N.H. Supreme Court make an error in law, and abuse its discretionary power and act arbitrarily, capriciously, and unreasonably, when in its # 87-363 (Strafford County Superior Court # 85-E-155) it declined review (See **A2**) and Motion for Reconsideration, knowing that perjury,

suppression of evidence, tampering of evidence among other things were characteristic of the trial, and did this effectually deny the petitioner his right to due porocess and equal protection of laws as guaranteed and specified by the 14th Amendment of the U.S. Constitution?

8.Given the many aberrations of the legal proceedings found in all aspects of this case, was the petitioner justified in asserting his right pursuant to N.H. Constitution, Part 1, Article 10th (See Page 10) not to be slavish, and to refuse to sign against conscience and religious beliefs (See N.H. Constitution, Part 1, Articles 4th and 5th, Page 9) " **freely and voluntarily** " documents desired by the state courts?

9. Does question 8 involve religious persecution as well as cruel and unusual punishment for holding to such moral and ethical behavior as religion prescribes? ((See U.S. Constitution Articles 1st and 8, Pages 12 and 13 as well as N.H. Constitution,

Part 1, Articles 4th and 5th (Page 9) and 33rd (Page 11)).

10. Was the incarceration of the petitioner by the state courts not only cruel and unusual punishment but aggravated cruel and unusual punishment, aggravated by the fact, that within the same order other means were specified by the court not requiring incarceration in order to achieve its goals? (See **A6**).

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PETITION FOR WRIT OF CERTIORARI

TO THE NEW HAMPSHIRE SUPREME COURT

Petitioner Roland E. Hemon, for himself and his mother, Olivette D. Hemon, petitions the Court to issue a writ of certiorari to the New Hampshire Supreme Court in this case.

OPINIONS BELOW

The final decisions of tne N.H. Supreme Court in its docket numbers 88-274 and 88-261 are dated January 9, 1989, and these orders represents exhaustion of state remedies in these cases and are set forth at **A1** and **A12.** N.H. Sup. Court #88-274 is the outcome of N.H. Strafford County Supreme Court # 85-E-155. Before N.H. Supreme Court # 88-274, there was N.H. Supreme Court # 87-363, derived likewise from N.H. Strafford County Supreme Court 85-E-155, which was finally decided June 29, 1988. This order is set forth at A2. As N.H. Supreme Court # 88-274 and # 87-363 have the same basis as to facts, law, constitutional provisions, and participants, they must be joined and considered together, in order to have a sensible meaningful whole. As can be seen by reading the orders set forth at A1 and A2, there is no justification given for the actions, or better non-actions, of the N.H. Supreme Court in covering-up perjury, violations of federal and state statutes,

violations of the titles, rights, privileges, and immunities provided for by both the state and federal constitutions. The net effect of this cover-up is to effectively create a special body of law to be used against the petitioner and his mother, Olivette D. Hemon, against their interests separately and in common, thus violating the due process clause and equal protection of laws clause of the 14th Amendment of the U.S.Constitution. Another aspect of this case is on appeal here as U.S. Supreme Court # 88-1199, which see, docketed December 19, 1988.

JURISDICTION

This Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1257 as amended June 27, 1988. § 1257 relates to direct appeal from the New Hampshire Supreme Court to the U.S. Supreme Court:

" § 1257. State Courts; certiorari
(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the

validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, priviliege, or immunity is specially set up or claimed under the Constitution or treaties or statutes of, or any commission held or authority exercised under, the United states."

STATUTES INVOLVED

18 U.S.C. §241, Conspiracy against rights of citizens:

" If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws or the United States, or because of his having so exercised the same;..."

18 U.S.C. §242, Deprivation of rights under color of law:

" Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privilieges, or immunities secured or protected by the Constitution or laws of the United States...

18 U.S.C.§1201(a)(1) and 18 U.S.C. § 1201(b) Kidnaping.

"(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts or carries away and holds for ransom, or reward or otherwise any person except in the case of a minor by the parent thereof, when:

(1) the person is willfully transported in interstate or foreign commerce;..... (b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce."

N.H. RSA 547-B:3,II states as follows:

" In other instances when guardianship services are required and there is NO RELATIVE, FRIEND, OR OTHER INTERESTED PERSON AVAILABLE, WILLING, AND ABLE TO SERVE IN SUCH CAPACITY, the probate court MAY APPOINT the public guardianship and protection program as guardian of the person, estate, or both person and estate, as may be deemed appropriate, provided that there are funds available to pay for such services."

N.H. RSA 464-A:2, **Definitions.** As used in this chapter:

" II. "' Available alternative resource '" means alternatives to guardianship including, but not limited to services such as visiting nurses, homemakers, home health aides, adult day care and multipurpose senior citizen centers; powers of attorney, representative and protective payees; and board and care shared homes. "

" XI. "' Incapacity '" means a legal, not a medical, disability and shall be measured by functional limitations....All evidence of inability must have occurred within 6 months prior to the filing of the petition (for guardianship), and at least ONE INCIDENCE OF SUCH BEHAVIOR MUST HAVE OCCURRED WITHIN 20 DAYS OF THE FILING OF THE PETITION FOR GUARDIANSHIP. Isolated instances of simple

negligence or improvidence, lack of resources or any act, occurrence or statement if that act, occurrence or statement is the product of an informed judgment shall not constitute evidence of inablity to provide for personal needs or to manage property. "

" XII. "' Informed Judgment '" means a choice made by a person who has the ability to make such a choice, and who makes it voluntarily after all relevant information necessary to making the decision has been provided, and who understands that he is free to choose or refuse any alternative available and who clearly indicates or expresses the outcoeme of his choice. "

" XIV. "' Least restrictive form of intervention '" shall mean that the guardianship imposed on the ward represents only those limitations necessary to provide him or her with needed care and rehabilitative services, AND THAT THE WARD SHALL ENJOY THE GREATEST AMOUNT OF PERSONAL FREEDOM AND CIVIL LIBERTIES CONSISTENT WITH HIS OR HER MENTAL AND PHYSICAL LIMITATIONS. "

N.H. RSA 464-A:3 Venue. " The venue for guardianship proceedings for a proposed ward is in the county in which the proposed ward resides. If the proposed ward does not reside in the state, the venue is in the county in which property of the proposed ward is located... "

N.H. RSA 464-A:6 Right to Counsel. " I. The right to legal counsel for any person for whom a temporary guardian or guardianship of the person and estate, or person, or estate, is sought shall be absolute and unconditional. IF THE PROPOSED WARD DOES NOT HAVE HIS OR HER OWN COUNSEL, THE COURT SHALL APPOINT COUNSEL FOR THE PROPOSED WARD IMMEDIATELY UPON THE FILING OF A PETITION FOR GUARDIANSHIP OF THE PERSON AND ESTATE, OR THE PERSON, OR ESTATE..."

N.H. RSA 464-A:8 Conduct of Hearing.

" II. The court may waive personal attendance of the proposed ward at the hearing when the petitioner or the counsel for the proposed ward FILES A WRITTEN STATEMENT WITH THE COURT AT LEAST 24 HOURS PRIOR TO THE HEARING INDICATING THAT THE PROPOSED WARD DOES NOT EXPRESS A DESIRE TO ATTEND THE HEARING. THE STATEMENT SHALL INCLUDE A PHYSICIAN'S AFFIDAVIT INDICATING THAT THE OVERALL PHYSICAL, EMOTIONAL, OR PSYCHOLOGICAL CONDITION OF THE PROPOSED WARD IS SUCH THAT HE OR SHE IS LIKELY TO SUFFER HARM OR THAT THE PROPOSED WARD HAS NO ABILITY TO UNDERSTAND THE NATURE AND CONSEQUENCES OF THE PROCEEDINGS..."

N.H. RSA 464-A:9 Findings.

" III. Alternatively, the court may appoint a guardian of the person and estate, or the person, or the estate...after finding in the record based on evidence beyond a reasonable doubt that:

(a) The person for whom a guardian is to be appointed is incapacitated; AND
(b) The guardianship is necessary as a means of providing continuing care, supervision, and rehabilitation of the individual, or the management of the property and financial affairs of the incapacitated person; AND
(c) There are no available alternative resources which are suitable with respect to the incapacitated person's welfare, safety, and rehabilitation or the prudent management of his or her property and financial affairs; AND
(d) The guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the proposed ward..."

N.H. RSA 491:8(a) **Motions for Summary Judgment.**

"...IV. If affidavits are not filed by the party opposing the summary judgment within 30 days, judgment shall be entered on the next judgment day in accordance with the facts. When a motion for summary judgment is made and supported as provided in this section, the ADVERSE PARTY MAY NOT REST UPON MERE ALLEGATIONS OR DENIALS OF HIS PLEADINGS, BUT HIS RESPONSE, BY AFFIDAVITS OR BY REFERENCE TO DEPOSITIONS, ANSWERS TO INTERROGATORIES, OR ADMISSIONS, MUST SET FORTH SPECIFIC FACTS SHOWING THAT THERE IS A GENUINE ISSUE FOR TRIAL..."

N.H. RSA 641:1 **Perjury.**

" I. A person is guilty of a class B felony if in any official proceeding:

(a) He makes a false material statement under oath or affirmation, or swears or affirms the truth of a material statement previously made, and he does not believe the statement to be true; or

(b) He makes inconsistent material statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true. In a prosecution under this section, it need not be alleged or proved which of the statements is false but only that one or the other was false and not believed by the defendant to be true..."

N.H. RSA 498:1 EQUITY POWERS AND PROCEEDINGS, **Jurisdiction.**

" The Superior Court shall have the powers of a court of equity in the following cases: Charitable uses; trusts; fraud, accident, and mistake; the affairs of partners, joint

tenants or owners and tenants in common; the redemption and foreclosure of mortgages; contribution; waste and nuisance; the specific performance of contracts; discovery; cases in which there is not a plain, adequate and complete remedy at law; and in all other cases cognizable in a court of equity. "

N.H. RSA 625:8 Limitations.

"...V. A prosecution is commenced on the day when a warrant or other process is issued, an indictment returned, or an INFORMAION is filed, whichever is the earliest..."

ARTICLES OF N.H. CONSTITUTION INVOLVED
Part 1
BILL OF RIGHTS

" Article 1st. (Equality of Men; and Object of Government.) All men are born equally free and independent; Therefore, all government, of right, originates from the people, is founded in consent, and instituted for the general good. "

" Article 2d. (Natural Rights.) All men have certain natural, essential, and inherent rights -- among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. "

" Article 4th. (Rights of Conscience Unalienable.) Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience. "

" Article 5th. (Religious Freedom Recognized.) Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt,

molested, or restrained, in his person, liberty, or estate, for worshiping God in the manner and season most agreable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship. "

" Article 8th. (Accountability of Magistrates and Officers.) All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. "

" Article 10th. (Right of Revolution .) Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. THE DOCTRINE OF NONRESISTANCE AGAINST ARBITRARY POWER, AND OPPRESSION, IS ABSURD, SLAVISH, AND DESTRUCTIVE OF THE GOOD AND HAPPINESS OF MANKIND. "

" Article 14th. (Legal Remedies to be Free, Complete, and Prompt.) Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws. "

" Article 15th. (Right of the Acused .) No subject shall be held to answer for any crime,

or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. AND NO SUBJECT SHALL BE ARRESTED, IMPRISONED, DESPOILED, OR DEPRIVED OF HIS PROPERTY, IMMUNITIES, OR PRIVILEGES, PUT OUT OF THE PROTECTION OF THE LAW, EXILED OR DEPRIVED OF HIS LIFE, LIBERTY, OR ESTATE, BUT BY THE JUDGMENT OF HIS PEERS, OR THE LAW OF THE LAND. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court. "

" Article 18th. (Penalties to be Proportioned to Offenses; True Design of Punishment.) All penalties ought to be proportioned to the nature of the offense. No wise legislature will affix the same punishment to the crimes of theft, forgery, and the like, which they do to those of murder and treason. Where the same undistinguishing severity is exerted against all offenses, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the lightest offenses. For the same reason a multitude of sanguinary laws is both impolitic and unjust. The true design of all punishments being to reform, not to exterminate mankind. "

" Article 33rd. (Excessive Bail, Fines, and Punishments Prohibited.) No magistrate, or court of law, shall demand excessive bail or sureties, impose excessive fines, OR INFLICT CRUEL OR UNUSUAL PUNISHMENTS. "

" Article 38th. (Social Virtues Inculcated.) A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives, AND THEY HAVE A RIGHT TO REQUIRE OF THEIR LAW-GIVERS AND MAGISTRATES AN EXACT AND CONSTANT OBSERVANCE OF THEM, IN THE FORMATION AND EXECUTION OF THE LAWS NECESSARY FOR THE GOOD ADMINISTRATION OF GOVERNMENT. "

ARTICLES OF U.S. CONSTITUTION INVOLVED

" ARTICLE I. Freedom of religion, of speech and of the press. Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of- the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievance. "

" ARTICLE IV. Searches and Seizures. THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. "

" ARTICLE V. Rights of accused in criminal proceedings; due process; eminent domain. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval

forces, or in the militia, whan in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; nor shall private property be taken for public use, without just compensation. "

" ARTICLE VIII. Bails, Fines and punishments. Excessive bail shall not be required, nor excessive fines imposed, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED. "

" ARTICLE XIV. §1. Citizenship rights not to be abridged by states. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS....§5. Power to enforce article. The congress shall have power to enforce by appropriate legislation, the provisions of this article. "

STATEMENT

A. Facts and Argument.

As this petition for writ of certiorari is written by one acting pro-se and a non-attorney, it reflects the opinions, logic, and views of an injured and abused person, who

is a taxpayer and a citizen of the United States.

N.H. Supreme Court # 88-274 and # 87-363 which are the subject matter of this petition for writ of certiorari, originated in guardianhsip proceedings, which were initiated by Armand Hemon, brother, and Heloise Davis, sister of the petitioner Roland E. Hemon (REH) against their mother, Olivette D. Hemon (ODH). This guardianship action was initiated by Armand Hemon and Heloise Davis contrary to the expressed wishes, desires, and plans of their mother ODH, and the petitioner REH supported his mother, ODH, in her attempts to remain free of their guardianship intentions. The guardianship initiative of Armand Hemon and Heloise Davis began in May of 1984. Beatrice Houle, a cousin of petitioner REH, participated as a witness against ODH during the guardianship proceedings, which were heard by the N.H. Strafford County Probate Court during the period August 1984 to April 11, 1985, on which date the Probate Court decreed,

that the Office of Public Guardian, a private non-profit corporation would be guardian of person and estate of the petitioner ODH. The Office of Public Guardian (OPG) is the respondent of this petition for writ of certiorari.

The guardianship proceedings in the N.H. Strafford County Probate Court were charaterized by perjury, slander, innuendo, fraud, violations of state statutes (See **STATUTES INVOLVED**, pages 5, 6, 7, 8, and 9), kidnaping (18 U.S.C. §1201(a)(1) and 18 U.S.C. §1201(b), See **STATUTES INVOLVED**, pages 4 and 5), violations of the N.H. Constitution (See **ARTICLES OF N.H. CONSTITUTION INVOLVED**, pages 9, 10, 11, and 12), violations of the U.S. Constitution (See **ARTICLES OF THE U.S. CONSTITUTION INVOLVED**, pages 12 and 13) and federal statutes (See **STATUTES INVOLVED**, page 4) 18 U.S.C. §241 and 18 U.S.C. §242 of the U.S. criminal code. The appointment of the OPG as guardian of person and estate of petitioner's mother, ODH, was an arrogant and

clear violation of N.H. RSA 547-B:3,II (See **STATUTES INVOLVED**, page 5), which clearly states, that only in an emergency, when there is no relative, friend, or other interested person willing, able and available, is the Probate Court permitted to act as it did, and as it clearly did **NOT** comply with N.H. RSA 547-B:3,II, it acted **UNDER COLOR OF STATE LAW.** As that Probate Court clearly made the above listed violations, this additionally underlines and emphasizes the **UNDER COLOR OF STATE LAW.**

> From **BLACK'S LAW DICTIONARY**
> **" Kangaroo Court: Term description of a sham legal proceeding in which a person's rights are totally disregarded and in which the result is a foregone conclusion because of the bias of the court or other tribunal. "**

The N.H. Strafford County Probate Court was clearly a kangaroo court acting **UNDER COLOR OF STATE LAW** in depriving both the petitioner and his mother of their rights under the law and constitutions, destroying both lives and squandering the assets of both, as it made a

global abuse of its discriminatory discretionary power as it plied its illegal version of due process. The Probate Court proceeded from weak or no venue to worse jurisdiction, oblivious to all civil rights, guarantees, and immunities of both the federal and state Constitutions, and only interested in the manifestations of its own crude, brutal, sadistic power and the oppressive and tyrannous implementation of its will.

In order to protect and foster the common interests of the petitioner and his mother, ODH, and challenge the machinations of Armand Hemon, brother, and Heloise Davis, sister, who were in the process of trying to force their mother, ODH, into an unsolicited, unnecessary, and undesired guardianship, an attorney, Terrie Harman, was retained, and appeared for the petitioner and his mother, ODH, during the guardianship proceedings during the period September 1984 to June 1985.

In spite of the fact, that this attorney had for months been pointing to all the

aberrations and shortcomings of the guardianship proceedings and saying that this and that were grounds for an appeal to the N.H. Supreme Court, when the moment of truth arrived, she failed. This attorney took a trip to Scotland, and returned too late to make a timely filing of a Notice of Appeal, that is within the 30 days of the April 11, 1985 decree of the N.H. Strafford County Probate Court. This lapse is clearly admitted, in the MOTION TO EXTEND TIME IN WHICH TO FILE APPEAL UNTIL TIME OF DISPOSITION ON PENDING MOTIONS, (See A2 et seq. of U.S. Supreme Court # 88-1199) which she filed in lieu of the Notice of Appeal, this also being untimely. Paragraph 7 of this motion admits her being out of the country with the consequent unavailability for filing a timely Notice of Appeal.(See A2 et seq. of U.S. Spreme Court # 88-1199).

The resulting dissension arising out of this intentional, irresponsible, and gross negligence on her part resulted in severance,

and the petitioner REH, a legal ignoramus, facing legal problems of monumental proportions. The long history , maturity and complexity of the case produced insuperable obstacles in finding and retaining new counsel to assume the burden, forcing the petitioner REH to begin to pro se. The heavy financial burden of pursuing any legal action was also a monumental concern requiring the choice of pro se action or doing nothing about the disaster, that had occurred to both the petitioner and his mother, ODH.

As a result of the MOTION TO EXTEND TIME IN WHICH TO FILE APPEAL UNTIL TIME OF DISPOSITION ON PENDING MOTIONS the N.H Supreme Court granted permission to file a MOTION FOR LATE ENTRY OF NOTICE OF APPEAL, which the petitioner REH did along with a NOTICE OF APPEAL and later appendices, all of which addressed the many aberrations of law, constitutions, and perjury characterizing the case. The end result was an order of the N.H. Supreme Court dated January 31, 1986,

which stated in part: **"...Since the petitioner failed to preserve his right to appeal with respect to the decision of April 11, 1985 on the merits,..."**. (See A7 of U.S. Supreme Court # 88-1199). This statement is a direct contradiction of the fact, that it was not the petitioner who failed to preserve his right to appeal with respect to the decision of April 11, 1985 on the merits, the petitioner being a complete legal ignoramus at the time, but a misbehaving and vacationing attorney, who betrayed her client by intentionally, irresponsibly, and gross negligently failing to file a timely NOTICE OF APPEAL.

Thus did the N.H. Supreme Court cover-up the many aberrations and shortcomings of the guardianship proceedings characterized by perjury, slander, innuendo, fraud, violations of state and federal statutes, and violations of both the state and federal constitutions. It hid behind a misbevaving attorney and unjustly passed the injurious consequences

onto the client, that is victimized the innocent and unknowing client by punishing that client for the omissions and carelessness of another. This though N.H. Supreme Court Rule 2 permits the setting aside of the rules upon just cause shown. The N.H. Strafford County Probate Court had to be protected at all cost, even at the loss of credibility, integrity, and respect and at the risk of criminal violations of the federal code. (See 18 U.S.C. §§ 241 and 242 cited in **STATUTES INVOLVED,** page 4). In the process those who perjured themselves, committed slander and innuendo, have escaped all censure and accountability for their actions, which have grievously injured the petitioner and his mother, ODH.

To allow any attorney through their intentional, irresponsible, gross negligence to negate due process rights, is to grant that attorney effective repeal power through misbehaving, of the 14th Amendment of the U.S. Constitution, which in itself is

unconstitutional. Such power was granted to Terrie Harman, when her omissions and misbehavior were used to justify ignoring a case permeated with the aberrations and shortcomings mentioned earlier and thus allow injustice to persist and to proliferate into other areas and legal actions in the future. What the N.H. Supreme Court said through its order of January 31, 1986, was that a misbehaving citizen can repeal the protection and rights guaranteed by the 14th Amendment of the U.S. Constitution vis-a-vis another citizen. What it said, was that a misbehaving attorney would be permitted to establish the grounds for future legal actions by the opposition, OPG, by shielding that opposition from the deserved consequences of their heinous past actions and giving an air of legitamacy to their future legal actions. By thus holding the N.H. Supreme Court shielded the actions and decisions of the lower state court, which because of the arbitrariness, capriciousness, and

unreason-ableness of these actions and decisions, and the illegalities and constitutional violations of both the state and federal constitutions found therein, effectively created a special body of law for the petitioners of the instant case, making actions and decisions that are discriminatory, and therefore contrary to the equal protections of laws guaranteed by the 14th Amendment of the U.S. Constitution as well as effectively denying due process.

While preparing a brief for the UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, the petitioner REH in his research encountered a brief to # 88-1260 filed there, in which the attorney Michael L. Parker, of Portland, Maine, made an eloquent statement in his conclusion, (Page 21) which is so close to the petitioner REH's observations, ideas, and conclusions, that it is quoted here:

"...Our society rightfully incarcerates law breakers because we demand they learn that society's rules must be obeyed--not only, because we consider the substance of a particular rule rational, but because

conformity to rules in itself is a prerequisite to living in an ordered society. But what lesson is taught, and what justice is done, when an incarcerated person relies upon the rules and conforms to them for nine years, only to have the government change those rules and withdraw benefits for reasons totally unrelated to the individual's conduct? We teach a lesson of caprice and cynicism, and we do injustice. Worse, we reinforce the very attitude we seek to change: that society and government cannot be trusted, that even if one wants to conform to the rules, in the end government will do whatever it pleases.

Justice Jackson recognized this fundamental concern in his dissent in Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 387-88, 68 S. Ct. 1, 5 (1947) stating: "' It is very well to say that those who deal with the Government should turn square corners. But there is no reason why square corners should constitute a one way street. '" See also Brandt v. Hickel, 427 F 2d 53, 57 (9th Cir. 1970)(" To say to these appellants, "' the joke is on you. You shouldn't have trusted us,'" is hardly worthy of our great government. "); Menges v. Dentler, 33 Pa. 495, 500 (1859)(" Men naturally trust their government and they ought not to suffer for it. ").

We cannot expect those we punish to respect the rules of society and system of government and the need for rules, if government may break, change or ignore its own rules in meting out punishment. As Justice Marshall so eloquently stated in dissent in Black v. Romano, 105 S. Ct. 2254, 2263 (1985): "' Thus while the state can define the rules of punishment initially...the state cannot change the rules in the middle of the game.'"

All society suffers when government acts this way, if for no other reason than that those prisonners who are released after having suffered governmental caprice are more likely to reason, that if government can break its

own rules, they may break them as well."

True as this may be for criminals, how much truer it is for the non-criminal, the average citizen; the above comments agree with and reinforce what Part 1, Art. 38 of the N.H. Constitution states:

" A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives, AND THEY HAVE A RIGHT TO REQUIRE OF THEIR LAWGIVERS AND MAGISTRATES, AN EXACT AND CONSTANT OBSERVANCE OF THEM, IN THE FORMATION AND EXECUTION OF THE LAWS NECESSARY FOR THE GOOD ADMINISTRATION OF GOVERNMENT."

Considering the above it would seem, that under the aegis of the New Hampshire Supreme Court, a misbehaving lawyer could effectively conspire with the opposition for mutual profit with impunity. True a malpractice suit might be in the offing, but there would be the uncertainties of a law suit, added costs and emotional and physical strain, and even if given the small probability that such a suit

were successful, there would remain the basic fact, that perjury, violations of state and federal statutes, and violations of both the state and federal constitutions would remain unpunished. The real perpetrators would escape unscathed and only the scapegoat attorney would suffer, or more reslistically her insurance company.

In the opinion of the petitioner REH, nothing so demonstrates the weakness of the opposition's case as the fact, that such a flimsy ploy, as blaming an attorney for non-compliance with the N.H. Spreme Court Rule 7 and passing the blame to the client in the form of not having preserved the right to appeal, was used to protect the lower probate court and the other perpetrators, and thus freeing them from all future adverse repercussions. Above all it must be remembered, that the petitioner ODH suffered more at the hands of the N.H. Strafford County Probate Court and the respondents than she had during her entire troubled lifetime. The

treatment the petitioner ODH had to bear was inhuman, cruel, sadistic, brutal, and filled with the characteristics of psychological torture. The petitioner REH suffered the frustration of helplessly being forced to witness this ill-treatment of his mother, the petitioner ODH, as well as the barbs aimed at him for daring to oppose the illegalities, inaccuracies and aberrations of the proceedings.

This is what the New Hampshire Supreme Court condoned and approved in defiance of the 14th Amendment rights to due process and equal protection of laws.

From UNITED NUCLEAR CORP. v. GENERAL ATOMIC CO., N.M., 629 P.2d 231, at 313:

"...The following general principles, set forth in our earlier decision, are equally applicable here:
The requirements of due process are not technical, and no particular form of procedure is necessary for protecting substantial rights. The circumstances of the case dictate the requirements. The integrity of the fact finding process and the basic fairness of the decision are the principal considerations."

Before proceeding to the next facet, it

should be noted, that the New Hampshire Supreme Court order dated January 31, 1986, (See A7 of U.S. Supreme Court # 88-1199) contains the opening phrase: " Office of Public Guardian's motion for summary affirmance is **DENIED**;...". The 10th word is emphasized, because the respondents in all future actions and at hearings kept insisting, that the word was affirmed, and the lower state courts acted as if the 10th word were indeed affirmed. What the OPG had requested in its prayer within its motion for summary affirmance, was summary affirmance of the N.H. Strafford County Probate Court decree of April 11, 1985 appointing them the guardian of person and estate of the petitioner ODH, and this summary affirmance was **DENIED** them by the New Hampshire Supreme Court. Though the petitioner REH made timely contradiction of the word affirmed whenever it appeared either orally or in print, and insisted on the recognition of the word **DENIED**, this fact was ignored by the lower state courts in all

actions and decisions, that followed the January 31, 1986 order of the New Hampshire Supreme Court. Even the New Hampshire Supreme Court carefully avoided the whole issue, when it was presented to them.

Now given the above circumstances, is it surprising, that the ultimate climax of this case was the nine (9) day confinement of the petitioner in the Strafford County House of Corrections, minimum-maximum security, in the company of a person Jayson Moore, accused of murder (now convicted), an armed robber and a variety of other felons. The state courts from the highest to the lowest have lost all sense of proportion. (See N.H. Constitution, Part 1, Article 18th, page 11). Because they have divorced themselves from law, constraints of both the federal and state constitutions, facts, and crowned perjury as king, they are capable of doing something as inane and insane as incarcerating a citizen of the United States, a lifetime citizen of the State of New Hampshire, a World War II veteran with

an nonorable discharge, who was involved in local government activities, and with no criminal record. It is puzzling to try to comprehend the reasoning of the Strafford County Superior Court in incarcerating the petitioner in the Strafford County House of Corrections: was it the petitioner who needed correcting, or was it really the Superior Court that needed correcting and decided to hide this fact by making the scapegoat petitioner the wrongdoer and thus **UNDER COLOR OF STATE LAW** cover-up its own deficiencies and inadequacies. The incarceration of the petitioner was most certainly not in the spirit of N.H. Constitution, Part 1, Article 18th: **"...The true design of all punishment being to reform, not to exterminate mankind. "** If reform were the goal, then the goal of reformation for the petitioner would have been the reverse of what he had been doing and thinking. Reformation would have been for the petitioner to accept perjury as right and the failure of the system to prosecute this

perjury as right; to accept the many violations of state statutes as right; to accept the violations of both federal and state constitutions as right; in other words changing the world upside-down was right; and the petitioner was to recant all, that he had been fighting for these past 5 years and thereby violate the N.H. Constitution, Part 1, Article 10th (See Page 10) **"...The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.** " The expectation of the state courts was that the petitioner would follow the " **good example** " set by the state courts and ignore, abuse, and violate the N.H. State Constitution as they had done so frequently and with impunity. The expectation was that the petitioner would crack under the psychological pressure of incarceration and thereby become " **absurd, slavish, and destructive of the good and happiness of mankind** " by unpatriotically signing " **freely**

and voluntarily " certain documents. (See **A9** et seq.), and thereby accept and vindicate all that had transpired in the state courts these past 5 years. The motto of the State of New Hampshire flashed on every automobile license plate is " **Live free or Die** ". Death would have been preferable to signing the abominations " **freely and voluntarily** ". Accepting death in defense of freedom and liberty and against the tyranny, oppression, and the evils engendered by the collective state court actions and judgments would be just a continuation of the commitment, that the petitioner made in World War II to fight against the oppressive and tyrannous evils of Nazi Germany and Imperial Japan. Tyranny and oppression and the evils they engendered are no more acceptable coming from local tyrants than they are from foreign tyrants. Tyranny, oppression, and evil are just that, tyranny, oppression, and evil whatever the source. The expectation of every citizen of the United States, given the foundations rooted in the

Declaration of Independence, and its derivative the Constitution of the United States are certainly not tyranny, oppression, and the evils engendered by local officials of whatever kind actively trampling over everything held most dear. To accept this is to accept the fact that the people have created a Frankensteinian monster, capable of turning upon the creator, **WE THE PEOPLE.** And the state courts of New Hampshire have been doing just this in destroying the lives of two citizens of the United States these past five years, the petitioner and his mother, Olivette D. Hemon. They have denied due process and equal protection of laws guaranteed by the 14th Amendment of the U.S. Constitution by abusing discretionary power by ignoring the totality of facts, uncritically admitting perjury into the process (See U.S. Supreme Court # 88-1199 at **A13** through **A33** for examples of such), suppressing evidence, not adhering to the constraints of state statutes, federal statutes, and of the federal and state

constitutions. They have collectively been acting as " **kangaroo courts** " as defined by Black's Law Dictionary:

> **"Term descriptive of a sham legal proceeding in which a person's rights are totally disregarded and in which the result is a foregone conclusion because of the bias of the court or other tribunal. "**

Despite the fact that drug-pushers receive the revolving door treatment because of the lack of prison space, their was room for the petitioner in the Strafford House of Corrections from June 21, 1988 through June 29, 1988, (See **A4** et seq. for Superior Court order giving such authority), for a total of nine (9) days. This incident against reason, common sense, and sound judgment, became the subject matter of N.H. Supreme Court # 88-274, the Notice of Appeal of which was declined October 27, 1988 (See **A3**) along with a Motion for Summary Reversal, which was denied. The Motion for Reconsideration timely filed November 7, 1988 was likewise denied January 9, 1989 (See **A1**), clearly underlining

and emphasizing the adamant intent to ignore this violation of N.H. Constitution, Part 1, Article 33rd (See Page 11) and U.S. Constitution Article VIII (See Page 13) by the lower state court, articles prohibiting cruel and unusual punishment. Thus the N.H. Supreme Court condoned, encouraged, and approved such treatment for other hapless New Hampshire citizens in the future by **their** system, as the lower Superior Court escaped unscathed, making it a model for the rest of the system to pursue and imitate, to control by intimidation and brute force rather than by truth, facts, justice, law, ever guided and constrained by the state and federal constitutions.

As can be seen by perusing the **ORDER ON MOTION FOR CONTEMPT** (See **A4** et seq.) the great crime of the century involved civil contempt by the **" recalcitrant"** petitioner, and the basis of this civil contempt was the fact and determination of the petitioner **NOT** to sign against his conscience (See N.H.

Constitution, Part 1, Articles 4th and 5th, Page 9) and against his detailed knowledge of the proceedings and happenings of the case, certain documents transferring interests in property held individually (and given the petitioner by his competent mother) and held in joint tenancy with right of survivorship with his mother, **" freely and voluntarily ".** The insistence of the N.H. Strafford County Superior Court on signatures **" freely and voluntarily "** given was to protect all that had transpired including its own actions and judgments, and thus it was self-serving, as well as protective of the opposing parties, against continued and future deserved protest and attack. The incarceration was to force the petitioner to admit, that the legal monstrosity sketched above was justified, good, and right for himself and his much abused mother; to admit, that the state courts had done well and were beyond reproach; and to admit, that the opposing parties were angelic in motive and act; to admit, that all the

effort the petitioner had expended as well as money were basely motivated and recalcitrant, when in fact, what the petitioner was doing was following what his mother, Olivette D. Hemon, had instructed him to do in her POWER OF ATTORNEY and otherwise. She opposed the the form of guardianship being imposed on her with every fiber of her being, having made her own decisions, plans, and provisions for the future, which she had in place and with which she was satisfied, contented, and happy. The petitioner on his part would have been far better off, had he not followed his Christian duty and obeyed the Mosaic law: **Honor thy father and thy mother.** The N.H. state courts have violated the N.H. Constitution, Part 1, Article 5th and the U.S. Constitution Amendment 1 by in effect establishing their own religion and mores for forced acceptance by the petitioner and interfering with the petitioner's right to practice his religion and follow its principles for good. This despite the fact, that the N.H. Strafford

County Superior Court actually lauded the petitioner in its order of July 23, 1987, paragraphs 7, 8, 9, and 10 by saying: **" In consideration of the services rendered by the defendant to Olivette D. Hemon as regards her real estate and personal needs..."** (See U.S. Supreme Court # 88-1199, **A11** , ORDER). If the services rendered his mother were good enough in the past to permit and admit this kind of consideration, then they were good enough to continue into the future, something which would have been highly approved by Olivette D. Hemon, for this is what she most sincerely desired and wanted. The incarceration and its basis were the greatest insult to a highly educated man's intelligence, sense of morality, right and wrong, justice, that could ever have been devised. Hence the highly justifiable recalcitrance of the petitioner. The court was operating in a world where the courts are the noble lords of the poor uneducated serfs of yesteryear, instead of public servants in a goavernment of the

people, by the people, and for the people as succinctly defined by former President Abraham Lincoln.

And this kind of judicial behavior could and would not be tolerated by the petitioner, especially when the petitioner knew beyond shadow of doubt, and which added insult to injury, that the N.H. Strafford County Superior Court had at least one viable alternative not requiring incarceration or the petitioner's signature, and one of these alternatives was clearly delineated within the same civil contempt order. (See **A5** to **A6**). After nine (9) days incarceration the petitioner succeeded in eliminating the **" freely and voluntarily "**, for the truthful under court order, that is under intimidation, coercion, duress, undue influence, and psychological torture created by abusive, oppressive and tyrannical state power, acting **UNDER COLOR OF STATE LAW.** Naturally, the petitioner repudiates these transactions based on incarceration, perjury (See U.S. Supreme

Court # 88-1199 at **A13** through **A33** for examples of such behavior among many), violations of state statutes and federal statutes, and violations of both constitutions, as discussed above and later and in U.S. Supreme Court # 88-1199. This incident violated N.H. Constitution, Part 1: Article 1st (Equality of Men and Object of Government), Article 2nd (Natural Rights), Article 4th (Rights of Conscience Inalien-able), Article 5th (Religious Freedom Recognized), Article 10th (Right of Revolu-tion), Article 18th (Penalties to be Propor-tioned to Offenses, True Design of Design of Punishment.), Article 33rd (Excessive Bail, Fines, and Punishments Prohibited.), and Article 38th (Social Virtues Inculcated), which see Pages 9 through 12, **ARTICLES OF N.H. CONSTITUTION INVOLVED, PART 1, Bill of Rights.** This incident of incarceration violated U.S. Constitution Amend. 1 (freedom of reli-gion), Amend. 4, Amend. V, Amend. VIII, and because all the above can be considered

violations of due process and equal protection of laws, Amend. XIV as well, which see Pages 12 through 13 **ARTICLES OF U.S. CONSTITUTION INVOLVED.**

It should be noted, that the N.H. Strafford County Superior Court incarcerated the petitioner (on June 21, 1988, See **A8**) nine (9) days before the N.H. Supreme Court denied the petitioner's Motion for Reconsideration with respect to N.H. Supreme Court # 87-363 on June 29, 1988 (See **A2**), that is while its # 85-E-155 was pending (the subject matter of N.H. Supreme Court # 87-363). The N.H. Strafford County Superior Court was so impatient and biased in this matter, it could not wait for the appeal process to exhaust itself, at least at the state level, let alone at the federal level. This further incriminates the incarceration incident. It was criminal because it violated the U.S. Criminal Code, 18 U.S.C. §§ 241 and 241 (See Page 4). It would seem, that considering N.H. Constitution, Part 1, Article

8th (Accountability of Magistrates and Officers) (See Page 10) and U.S.C. §§ 241 and 242 (See Page 4), that the N.H. Strafford County Probate Court, the N.H. Strafford County Superior Court and the N.H. Supreme Court could be indicted and prosecuted for the crimes, that they have committed against the persons of the petitioner, and his mother, Olivette D. Hemon. The consortium of the N.H. Probate Court, N.H. Superior Court and N.H. Supreme Court certainly demonstrated conspiracy with clearly delineated intent to malign both the petitioner and his mother, Olivette D. Hemon by trampling over their civil rights, immunities, and guarantees of due process and equal protection of laws found in U.S.Constitution's 14th Amendment. There should be a sufficiency of lapse to satisfy 18 U.S.C. §§ 241 and 242. The prolonged and consistent actions and judgments of the consortium most certainly satisfy intent as defined by Justice Holmes at Page 96, in **SCREWS v. U.S.**, 325 U.S. 91:

"...Holmes, The Common Law, pp. 66 et seq. But the general rule was stated in ELLIS v. UNITED STATES, 206 U.S. 246, 257, as follows: "' If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent. '" And see HORNING v. DISTRICT OF COLUMBIA, 254 U.S. 135, 137; NASH v. UNITED STATES, 229 U.S. 373, 377. "

B. Proceedings Below.

The previous **Facts and Argument** serves as background to understand the advent of New Hampshire Supreme Court # 88-274, # 88-363, and # 88-261, and their respective progress to this U.S. Supreme Court and the petition for writ of certiorari filed with this Court.

The three docket numbers listed above all have the same bases in fact, law, constitutional provisions found in both the federal and state constitutions, as well as persons, who were participants. All three cases are characterized by an accumulation of failings, lapses, and anomalies previously described here in the above **Facts and**

Argument, and in U.S. Supreme Court # 88-1199 filed earlier. (December 19, 1988). The three cases together with that found in U.S. Supreme Court # 88-1199, magnify and amplify the conspiracy and intent to harm the petitioner and his mother, Olivette D. Henon, then is represented by their mere sum.

N.H. Supreme Court # 88-274 (finally exhausted January 9, 1989, See **A1**) has reference to unconstitutional and unlawful incarceration of the petitioner June 21, 1988 through June 29, 1988 for a total of nine (9) days as described in **Facts and Argument** above.

N.H. Supreme Court # 88-363 (finally exhausted June 29, 1988, the day the petitioner was released from the Strafford County House of Corrections, See A2) was the result of an appeal from N.H. Superior Court order in its # 85-E-155 dated July 23, 1987. (See U.S. Supreme Court # 88-1199, **A9** et seq.) issued after a trial in which evidence was suppressed; witnesses who committed perjury in the guardianship phase of the total

case, Armand Hemon and Heloise Davis, brother and sister respectively of the petitioner, to testify and give a repeat performance, (See U.S. Supreme Court # 88-1199, **A13** through **A33**, for two examples of many; and See U.S. Supreme Court # 88-1199, **Proceedings Below**, Pages 18 et seq. for fuller description), tampering of evidence, and other aberrations all reported to the N.H. Supreme Court, and which it thought deserved only declination, denial, and ignoring, and thus approved, condoned, and encouraged such actions and judgments by the state courts against hapless and helpless New Hampshire citizens in the future.

N.H. Supreme Court # 88-261 (finally exhausted January 9, 1989, See **A12**) has reference to the petitioner's attempt by filing a Petition for Guardianship of Person and Estate of Olivette D. Hemon on May 20, 1988 with the N.H. Strafford County Probate Court requesting that it terminate the Office of Public Guardian's (OPG), the respondent, guardianship granted it April 11, 1985, and in

its stead, it appoint the petitioner pursuant to N.H. RSA 464-A:39; N.H. RSA 547-B:3,II; N.H. Constitution, Part 1, Article 38th; and pursuant to the due process and equal protection of laws clause of the 14th Amendment of the U.S. Constitution. (See **A13** et seq.). N.H. RSA 464-A:39 was cited by the petitioner at paragraph 18 of his Petition for Guardianship of Person and Estate of Olivette D. Hemon and is quoted here having been omitted from **STATUTES INVOLVED**, Page 4 et seq.:

> **" On petition of the ward or ANY PERSON INTERESTED IN HIS OR HER WELFARE, the court may remove a guardian and appoint a successor..."**

N.H. RSA 547-B:3,II is found at Page 5, where it is found, that the appointment of a relative as guardian has precedence over a public guardianship, in this case the OPG, a private non-profit corporation, and the respondent, which is permitted by the word **MAY** found in the statute, in the absence of other suitable candidate, a **"...RELATIVE, FRIEND, OR**

OTHER INTERESTED PERSON AVAILABLE, WILLING AND ABLE TO SERVE IN SUCH CAPACITY...".

In his May 20, 1988 petition for guardianship, (See **A13** et seq.) reminded the N.H. Strafford County Probate Court, that the petitioner was the person chosen by Olivette D. Hemon, his mother, as the person to be guardian of her person and estate, as was attested to by many witnesses, Power of Attorney, and other documentation; that the petitioner was chosen by Olivette D. Hemon from the three available children to be her executor in her wills of 1976 and 1983 (the same choice having been made independently by the petitioner's father in a secret will of 1973, showing that both parents had made the same evaluation of trust and confidence in the petitioner, that he was a person of sound character), and therefore such an appointment would insure continuity of control and supervision before as well as after death; that the finding of the N.H. Strafford County Superior Court in its order dated July 23,

1987 had recognized the excellent services of the petitioner with respect to real estate and personal needs of the petitioner's mother, Olivette D. Hemon (See U.S. Supreme Court # 88-1199, **A11** and **A12**, paragraphs 7 through 10); that in no way could there be any hanky-panky in the guardianship or the executorship as the Probate Court would retain supervision through both phases and therefore continuity; and that the present arrangement with the OPG, the respondent, as guardian was resulting in inefficient and irresponsible squandering of the assets of mother and son, Roland E. Hemon, the petitioner, with no additional benefit for Olivette D. Hemon, for which purportedly all of this had been done. It is a fact, that can be attested to, that Olivette D. Hemon cried more after her incarceration in the OPG guardianship, then hse had ever in her adult lifetime, that the petitioner knew her. It should be noted and remembered, that the original guardianship granted the OPG, respondent, was rooted in

perjury, innuendo, character assasination, and fraud; violated state statutes (See **STATUTES INVOLVED,** Page 4 et seq.), violations of various N.H. Constitution articles, which see at Page 9 and 10; various articles of the U.S. Constitution, which see at Pages 12 and 13. These anomalies are discussed at greater length in U.S. Supreme Court # 88-1199, **Proceedings Below**, beginning at Page 18 through 35.

As the petitioner was about to finish the instant petition for writ of certiorari, he received the order of the U.S. Supreme Court with respect to No. 88-1199 dated March 20 , 1989 denying the petition for writ of certiorari carrying that docket number.

The petitioner wishes to resubmit the subject matter of U.S. Supreme Court No. 88-1199, as perhaps its disposition as of March 20, 1989 may be reversed, when the greater totality of facts and circumstances represented by the instant petition for writ of certiorari is considered along with those

of No. 88-1199. The picture painted by both taken together amplifies and magnifies the harm and legal horror of what happened to Olivette D. Hemon, the petitioner's mother, and the petitioner son at he hands of the state courts, by their willful and intentional trampling of law and both constitutions in an exercise of raw state power, that was unscrupulous, capricious, unreasonable, arbitrary, contrary to law, and provisions found in both the federal and state constitutions, and most certainly a series of actions, judgments, and orders performed **UNDER COLOR OF STATE LAW.** The net effect of the many aberrations and anomalies to be found in this collection of actions, orders, and judgments was the creation of special law for Olivette D. Hemon and the petitioner son, and this can not be equated to equal protection of laws guaranteed by the 14th Amendment, which means that the same laws are to be applied to all citizens without discrimination. If this case is an example of the use of discretionary

power, then it most certainly represents the misuse of that power as can be seen by the great harm, that has been done to Olivette D. Hemon as was demonstrated by the copious tears she cried as she underwent and suffered the ordeal; and the consequent harm done to the petitioner son for his loyalty, caring, and loving behavior in trying desperately to protect her against laws and rules, that were changing in order to serve a predetermined end, the destruction of her life and all she held most dear through the perverse will of the state courts. It was the rampant negating of the state legislature and its statutes, as well as negating the will of the people of New Hampshire by not adhering to its constitution, which in New Hampshire is created and sustained by vote of the people, that is referenda over the years, that produced the legal disaster represented by this case, and worse the concomitant human disaster. The guiding principle of the state courts seems to be, let the people through

their legislature and governor give an inch of jurisdiction and power, and through discretionary expansion of it they will assume a mile. This is an obvious and clear arrogant subversion of the will of the people of New Hampshire, who have in N.H. Constitution, Part 1, Article 38th said no to this kind of expansion. (**See ARTICLES OF N.H. CONSTITUTION INVOLVED**, Page 12). We indeed have an imperial judiciary in New Hampshire, and this is not consistent with govenment of the people, by the people, and for the people, which is supposed to exist in the United States. What is exemplified here is government by a small coterie of men, instead of what is supposed to be, government under law, the people's law.

The above was stimulated and motivated by a remark heard by the petitioner on a PBS broadcast of ETHICS IN AMERICA, subtitled Truth on Trial, in which Justice Antonin Scalia participated. Coincidentally, the remark was heard on the very day, that he

received the order with respect to U.S. Supreme Court # 88-1199. As the salient thesis of # 88-1199 was lawyer misbehavior and incompetence and that a client should not be held responsible for derivative consequences of that misbehavior and incompetence, the remark was indeed revealing. The remark was recorded by the petitioner's VCR and is as follows:

"...At least when you pick your lawyer, you know <u>that if he is bad, its your fault</u>..."

It is difficult for a knowledgeable person in a given area of expertise to recognize and appreciate the difficulties, that a non-expert can have in coping, in this case with law, and expecially , choice of lawyer. The petitioner has had a great deal of experience in the last years as an outsider coping with the legal profession and can affirm unequivocally, it is extremely difficult, if not impossible. The only persons really able to discriminate between good and bad lawyers are other lawyers, who have the

knowledge and information available to make such discriminatory choices. Judges perhaps have even better capacity to do this being in effect able to oversee performance on a daily basis of those lawyers practicing within their jurisdictions. The general public can not do this, and when it comes to choosing a lawyer is really picking a pig in a poke. It is chance selection aggravated by the size of one's wallet, which in and of itself can determine the quality of representation. This along with the fact, that the legal system protects irresponsibility, negligence, and incompetence in lawyers by punishing the clients rather than the misbehaving lawyers adds to the burden of clients and the consequences they are forced to suffer. In the American legal system the guilty and the **INNOCENT** are punished. The **INNOCENT** however are always punished more severely than are the guilty, as any punishment suffered by the **INNOCENT**, no matter how small, is too much. The lawyer complained of in U.S. Supreme Court

88-1199 was a referral given the petitioner and his mother by the N.H. Civil Liberties Union, and so the source made it appear, that she was a responsible **GOOD** lawyer, not a **BAD** lawyer. Her service during the nine months between beginning involvement in the case and her failure to file a timely Notice of Appeal with the N.H. Supreme Court apeared to a naive client to be satisfactory, giving no intimation, that she would intentionally sabotage the appeal process by her incompetent irresponsible, negligent behavior, which she admits. (See U.S. Supreme Court # 88-1199, **A5**, paragraph 7). Since then because of knowledge gained by pro-seing and hindsight more discrepancies can be found. What this underscores is the utter helplessness of the general public, facing the problem of retaining a **GOOD** attorney, for the **GOOD** may become the **BAD**, and be discovered as **BAD** only after everything is finished, and the client is held unjustly responsible for the transformation of **GOOD to BAD** and its

consequences. This is insanity and most certainly not a worthy position for the American legal system to hold and sustain. It is most disturbing, that Justice Scalia, sitting on the highest court in the land, holds the above stated opinion.

The above statement of J. Scalia and its expressed concept is at the crux of U.S. Supreme Court # 88-1199, and in all probability represents the bases for the denial of # 88-1199. The petitioner desires and hopes, that the U.S. Supreme Court will reconsider # 88-1199 in the light of the new representations and the need for U.S. citizens to have something better than:

"...At least when you pick your lawyer, you know <u>that if he is bad, its your fault</u>..."

Justice is better served by freeing innocent unknowing clients from the grievous consequences of attorney incompetency, irresponsibilty and negligence. It should be noted, that for the incompetent, irresponsibile, and negligent service and its

horrible consequences amplified by state court indulgence, the petitioner paid $19,100.00. Such injury to his case the petitioner could have done for free; he did not need the services of a lawyer to do that at a cost $19,100.00. The $19,100.00 was used to retain the expertise necessary to avoid legal pitfalls, and the money failed in its purpose, and in fact exacerbated the bad results, and this because of the collusion of the state courts in protecting the lawyer.

Let us put the case, that a man is driving his car in an area in which he is a stranger, and his car malfunctions. Out of several garages available, he chooses one to repair his car. After the repair he resumes his trip only to find, that his car still malfunctions. He returns to the garage to complain, and is told, tough, its your fault that the car malfunctions, because you picked a bad garage. This is nonsensical in this scenario and nonsensical in the legal as well.

REASON FOR GRANTING THE WRIT

Reason for granting the writ can be found in the preceding, which recounts not only the attorney failure, but also the many constitutional (federal and state) violations, statutory violations, perjury tolerance with its concomitant effect on witness credibility, evidence suppression, and the tampering of evidence among other things.

All of the various statutes and constitutional articles listed Pages 4 through 13 have been violated in this case, including U.S. Constitution Article 8 prohibiting cruel and unusual punishment. This latter because the petitioner was incarcerated for nine days, for his refusal to accept and to exonerate all of the aberrations by signing " **freely and voluntarily** " certain documents, and this when alternatives existed. The net effect of all the aberrations including useful perjury was that the state courts created a special body of law for the petitioner and his mother,

Olivette D. Hemon, which is discriminatory and contrary to the equal protection of laws clause of the 14th Amendment, and in doing so they have made a mockery of the due process clause of the 14th Amendment as well.

For lack of space, reference is made to U.S. Supreme # 88-1199, **REASON FOR GRANTING THE WRIT** for more lenghty commentary, for explanation of the petitioner's use of the prepositional phrase **UNDER COLOR OF STATE LAW** derived from **SCREWS v. U.S.**, 325 U.S. 91, at 109, 110, and 111.

CONCLUSION

This petition for writ of certiorari should be granted, or the petition should be granted and the decisions below summarily reversed, because these decisions were an abuse of state power made **" UNDER COLOR OF STATE LAW "**, and in violation of the 14th Amendment of the U.S. Constitution, as due process was denied as was equal protection of the law.

It might be appropriate to indict and

prosecute the N.H. Supreme Court pursuant to 18 U.S.C. §§241 and 242 for conspiracy and intent to abrogate the civil rights, privileges, and immunities of the petitioner and his mother, Olivette D. Hemon guaranteed by the U.S. Constitution.

DATE: April 3, 1989 Respectfully submitted,

Roland E. Hemon,

Roland E. Hemon, Pro se
10 Oak St., Dover, N.H. 03820, Tel. (603) 742-1879.

AFFIRMATION

STATE OF NEW HAMPSHIRE, STRAFFORD COUNTY

I hereby certify that the above-named Roland E. Hemon did personally appear and made solemn oath that the statements contained in **PETITION FOR WRIT OF CERTIORARI TO THE NEW HAMPSHIRE SUPREME COURT** filed with the U.S. Supreme Court are true to the best of his knowledge. I hereby certify to his signing of the **CERTIFICATE OF SERVICE,** as well.

DATE: April 3, 1989

Notary Public DOLORES BOUTIN, Notary Public
My Commission Expires July 24, 199

CERTIFICATE OF SERVICE

I hereby certify, that pursuant to U.S. Supreme Court Rule 28.3, three copies of this petition for writ of certiorari have been mailed to the respondent, Office of Public Guardian, 6 White St., Concord, N.H. 03301, Tel. (603) 224-8041; Atty. Anthony Hartnett, Merchants Building, Dover, N.H. 03820, Tel. (603) 749-2225; Atty. John Lyons, P.O. 477, Portsmouth, N.H. 03801, Tel. (603) 436-6500.

DATE: April 3, 1989

Roland E. Hemon, Pro se

APPENDIX

THE STATE OF NEW HAMPSHIRE
SUPREME COURT
#88-274

In Case No. 88-274 Office of Public Guardian v. Roland E. Hemon the court upon January 9, 1989 made the following order:

Defendant's motion for reconsideration and motion to stay are denied.

Distribution:

Roland E. Hemon
John D. MacIntosh, Esq.
Scott F. Innes, Esq.
Strafford County Superior Court
File

Printed:
Ralph H. Wood,
Clerk

THE STATE OF NEW HAMPSHIRE
SUPREME COURT
87-363

In Case No. 87-363 Olivette D. Hemon by & through the Office of Public Guardian v. Roland E. Hemon the court upon June 29, 1988 made the following order:

Defendant's motion for reconsideration is denied.

Distribution:

John D. MacIntosh, esquire
Roland E. Hemon, esquire
Strafford County Superior Court
Donna R. Craig, Supreme Court
File

Printed:
Ralph H. Wood,
Clerk

THE STATE OF NEW HAMPSHIRE
SUPREME COURT
88-274

In Case No. 88-274 Olivette D. Hemon & a. v. Roland E. Hemon the court upon October 27, 1988 made the following order:

Defendant's motion for summary reversal is denied. Notice of appeal is declined.

See Rule 7(1).

Distribution:

Strafford County Superior Court
John D. MacIntosh, Esquire
Scott F. Innes, Esquire
Mr. Roland E. Hemon
Donna R. Craig, Supreme Court
File

Printed:
Ralph H. Wood,
Clerk

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. SUPERIOR COURT

85-E-155

Olivette D. Hemon, et als

v.

Roland E. Hemon

ORDER ON MOTION FOR CONTEMPT

Once again, I find this defendant in contempt of Court. To say that he is recalcitrant is to make the supreme understatement. He has been afforded every opportunity to express his claim that the judicial syatem allows and more. The order of this Court dated July 23, 1987 and subsequent orders of the Court have made it clear that the positions he espouses are without merit. The New Hampshire Supreme Court has refused to stay the orders of Superior Court and has denied his appeal. (**Not true as it was not until June 29, 1988, that this was finalized, ((See A2)) and the order is dated June 21, 1988, eight days prior to the N.H. Supreme Court date).**

The defendant admitted in open court that he has not complied with the order of July 23, 1987 and does not intend to do so. The Office of Public Guardian has prepared three (3) quitclaim deeds to transfer his interest in the property located at York Harbor, Maine; Brevard County, Florida; and Putnam County, Florida to his mother as required by the Court's order. Copies of those deeds have been attached to this order and marked Exhibits 1A, 1-B and 1-C. **(This order and exhibits were served by the sheriff while the petitioner was in solitary confinement in the Strafford County House of Corrections).**

For his failure to comply with the Court's order of July 23, 1987 I find him in civil contempt of Court and order that he be confined in the Strafford County House of Correction until he executes the originals of the deeds marked as exhibits to this order and until the Office of Public Guardian certifies to the Court that he has fully complied with the balance of the order. **If within (5) days**

of the date of this order the defendant has not signed the deeds, this Court appoints John Lyons, of Portsmouth, as commissioner to sign those deeds in behalf of and in the name of Roland E. Hemon, to transfer by virtue of this order, all right, title and interest Roland E. Hemon has in such real estate to his mother Olivette D. Hemon with the same force and effect as if Roland E. Hemon, himself, executed the deeds. No further action of Mr. Hemon shall be necessary to effect the transfer. (This alternative is independent of incarceration making incarceration to achieve transfer of interest unnecessary and therefore " cruel and unusual punishment " in violation of N.H. Constitution, Part 1, Article 33rd and U.S. Constitution Article VIII. The motivation for choosing brute state power to obtain signatures " freely and voluntarily " was the desire to obtain absolution from the petitioner for the perjury, that has been honored without challenge, for violations of state statutes,

for violations of both constitutions, for ignoring the facts, and above all for the psychological abuse of the petitioner's mother he has been forced to observe these passed years helpless to intervene and relieve her of her persecutors. Too much that is vile and heinous has happened to both the petitioner and his mother for this to happen contrary to the petitioner's conscience, ethics, morality, and intelligence. To have signed " freely and voluntarily " would have been to sign a lie, and incarceration was preferable. It would have meant giving the petitioner's blessing to state confiscation of property **UNDER COLOR OF STATE LAW**, and more importantly to have denied the wishes, plans, and desires of petitioner's mother she had entrusted him to preserve. All that was forced by intimidation, coercion, duress, and psychological pressure is unequivocally repudiated.)

If within 5 days of this order the defendant has not signed the quitclaim deeds and if within 20 days of this order has not

fully complied with the balance of the order of July 23, 1987, the Clerk of Court shall issue Orders of Notice to the defendant Roland E. Hemon to be served in person upon him by the sheriff to show cause why he should not be found in criminal contempt for his failure to comply with the Court's order of July 23, 1987. He shall be entitled to trial by jury on that charge of criminal contempt to be heard by a justice of the Superior Court other than the undersigned justice. He shall be entitled to counsel to represent him and to appointed counsel if he cannot afford counsel. He shall be entitled to all of the other rights of a criminal defendant and upon conviction by a jury may be subject to imprisonment to the House of Correction as the law allows.

SO ORDERED.

Date: 6/21/88

Signed:
Joseph P. Nadeau

Presiding Justice

The three quitclaim deeds Exhibits 1-A, 1-B, and 1-C follow each beginning:

I, Roland Hemon, single of 10 Oak Street, Dover, County of Strafford, State of New Hampshire for consideration paid grant to Olivette D. Hemon, single of Dover, New Hampshire (with a mailing address of c/o Office of Public Guardian, 6 White Street, Concord, New Hampshire 03301)

(Olivette D. Hemon's address as of the guardianship proceedings had been York Harbor, Maine since she bought the property located at York Harbor, Maine in 1950 and was only an occasional visitor to 10 Oak St., Dover, N.H., the petitioner's home. Thus Venue as defined by N.H. RSA 464-A:3 (See Page 6) was not with N.H. Strafford County Probate Court as Olivette D. Hemon was not a resident of the State of New Hampshire and Strafford County, nor did she own any property located in the State of New Hampshire as notice the three quitclaims are for property in Maine and Florida. And so this state statute was violated at the very beginning of this case and as the petitioner refused to accept this violation among others as right, true, just, legal and constitutional, he was thrown in prison June 21, 1988 for a total of nine (9) for unwillingness to accept this state of affairs " freely and voluntarily ". The whole case was engendered UNDER COLOR OF STATE LAW and in violation of the 14th Amendment of the U.S. Constitution. All of this has been brought to the attention of the N.H. Supreme Court resulting in declination and denial.)

with QUITCLAIM COVENANTS to the said Olivette D. Hemon all my right, title and interest in the following:

(What followed is not set forth here as not being pertinent being descriptions of the 3 properties, one in York Harbor, Maine and the other two in Putnam County and Brevard County Florida respectively, the latter two being just land of about one acre each.)

After each description of property of the three exhibits 1-A, 1-B, and 1-C, quitclaim deeds all, is found:

This conveyance is pursuant to a Court Order in an action entitled Olivette D. Hemon, By and Through her Legal Guardian, the Office of Public Guardian v. Roland E. Hemon, Strafford County, (New Hampshire) Superior Court, Case No. 85-E-155.

WITNESS my hand this ____ day of ___, 1988.

_____ _____

Witness Roland Hemon

STATE OF NEW HAMPSHIRE DATE:_____

COUNTY OF _____

Personally appeared the above-named Roland Hemon, known to me or satisfactorily proven to be same, and acknowledged the above signature as his own **freely and voluntarily** given on the foregoing instrument for the purposes therein, before me,

_____

Notary Public

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

88-261

In Case No. # 88-261 In re Guardianship of Olivette Hemon the court upon January 9, 1989 made the following order:

Petitioner's motion for reconsideration and motion to stay are denied.

Distribution:

Roland E. Hemon

John E. Lyons, Jr., Esq.

Anthony Hartnett, Esq.

Linda Mallon .....) Office of Public

John D. McIntosh, Esq.....) Guardian

Strafford County Probate Court

File

Printed:

Ralph H. Wood,

Clerk

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. COURT OF PROBATE

Objection to Paragraph 18, cont.

AMENDMENT TO OBJECTION

PETITION

In re: GDN # 72 -- Olivette D. Hemon

THE HONORABLE JUDGE OF PROBATE FOR THE COUNTY OF STRAFFORD:

Your Petitioner Roland E. Hemon of 10 Oak St., Dover, N.H., in said County, respectfully represents that there is occasion for the appointment of a Guardian over the person and estate of Olivette D. Hemon of Newport Health Care Center, Newport, Vt., age 83, having an adult spouse named (Deceased) and whose adult children and adult siblings and parents are the persons whose names, residences, and relationships are as follows:

Already on file in GDN # 72

That your petitioner is Roland E. Hemon, son, and the name and address of the person or institution having the care or custody of said ward is Office of Public Guardian, Tel. (603)

224-8041.

This Court has jurisdiction because RSA 464-A:39,I; RSA 547-B:3,II; N.H. Constitution, Part 1, Article 38th; 14th Amendment of the U.S. Constitution.

It is necessary for an appointment of a Guardian over the person and estate of Olivette D. Hemon for the following reasons:

1. On May 13, 1988, the petitioner for guardianship of person and estate of Olivette D. Hemon filed an Objection to the OPG (Office of Public Guardian) Petition to Sell Real Estate, attached **MOTION FOR RECONSIDERATION** filed with the N.H. Supreme Court on April 11, 1988 to this Objection, and in paragraph 18 of this Objection stated: " A-mendment to follow shortly. "

2. This Petition for Guardianship of Person and Estate of Olivette D. Hemon is that amendment.

3. Olivette D. Hemon is the mother of the petitioner, Roland E. Hemon.

4. Probate Court perusal of the **MOTION FOR**

RECONSIDERATION will supply grounds and argument for vesting the son, Roland E. Hemon, with the responsibility of guardianship of person and estate of Olivette D. Hemon.

5. The guardianship decree of this Probate Court dated April 11, 1985 granting the OPG guardianship of person and estate of Olivette D. Hemon is obsolete.

6. The OPG has been grossly negligent, incompetent, and irresponsible during its tenure.

7. The OPG has used misleading statements and misrepresentations during its tenure.

8. The OPG has violated Strafford County Superior Court order dated February 22, 1988, paragraph 5.

9. In the matter of Olivette D. Hemon, the OPG is in violation of its Articles of Agreement.

10. Vesting the petitioner, Roland E. Hemon, with guardianship of person and estate of Olivette D. Hemon is lawful, constitutional, and above all, what Olivette D. Hemon wanted, planned, and intended, me, the petitioner,

Roland E. Hemon, having this responsibility.

11. Vesting the son, Roland E. Hemon, with guardianship of person and estate of Olivette D. Hemon would end the exploitation of Olivette D. Hemon inherent in the present status.

12. Vesting the son, Roland E. Hemon, with guardianship of person and estate of Olivette D. Hemon, would end the discrimination inherent in her, Olivette D. Hemon's, present status.

13. The 14th Amendment of the U.S. Constitution states:

> **" §1. Citizenship rights not to be abridged by states. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. "**

14. The Constitution of New Hampshire, Part 1, Article 38 states:

" A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives, and they have a right to require of their law-givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of government. "

15. The petitioner is a relative, a son, who is " available, willing, and able to serve in such a capacity ", that is guardianship of person and estate of Olivette d. Hemon, as determined by RSA 547-B:3,II.

16. RSA 547-B:3,II:

" In other instances when guardianship services are required, and there is NO RELATIVE, friend, or other interested person AVAILABLE, WILLING, AND ABLE TO SERVE IN SUCH A CAPACITY, the probate Court MAY APPOINT the public guardianship and protection program as guardian of the person, estate, or both person and estate, as may be deemed appropriate, provided that there are funds available to pay for such services. "

16. As the petitioner is the executor named in the 1976 and 1983 wills of Olivette D. Hemon,

appointment of the petitioner as guardian of person and estate of Olivette D. Hemon would create a continuity of service and responsibility with respect to the estate of Olivette D. Hemon, by bridging the two aspects.

17. The joining of the two services, namely guardianship of person and estate of Olivette D. Hemon with the executorship of her estate, is lawful, constitutional, and logical.

18. RSA 464-A:39,I states:

> **" On petition of the ward or <u>ANY PERSON INTERESTED IN HIS OR HER WELFARE</u>, the court may remove a guardian and appoint a successor if it is in the best interests of the ward..."**

19. The guardianship of person and estate of Olivette D. Hemon now vested in the OPG was achieved by fraudulent means, and is based on perjury of the parties involved.

Real Estate owned by ward located at (Already on file) consisting of ___ approximate value $___, and personal property consisting of (Already on file) approximate value $___. Income of ward consists of

$18,000.00 to $19,000.00.

Wherefore, he pray that Guardianship thereof may be granted to Roland E. Hemon of 10 Oak St., Dover, N.H. 03820, Tel. (603) 742-1879, with the following specific limitations on the powers of the said guardian:NONE

Your Petitioner also prays that UNNECESSARY of ___be appointed to take an inventory and appraise the Estate of said Ward.

Dated the 20th day of May A.D. 1988.

Signed: Roland E. Hemon

STATE OF NEW HAMPSHIRE

Strafford, ss. May 20, 1988

Personally appeared the above-named Roland E. Hemon and subscribed and took oath that the foregoing allegations are true to the best of knowledge and belief. Before me,

Signed: Carole M. Clifford

Notary Public

My Commision Expires October 2, 1989

Strafford, ss. COURT OF PROBATE

At a Court of Probate held at Dover in said County on 25th day of May, A.D. 1988 upon due consideration of foregoing petition as amended it is decreed that the prayers thereof be denied.

Signed: Gary Cassevechia

Judge of Probate

88- 1798

APR 10 1989

No. 88 -

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ROLAND E. HEMON,
Petitioner,

v.

OFFICE OF PUBLIC GUARDIAN, et al.
Respondents

SUPPLEMENTAL APPENDIX

PETITION FOR WRIT OF CERTIORARI

TO THE NEW HAMPSHIRE SUPREME COURT

Roland E. Hemon, Pro se
10 Oak St.,
Dover, N.H. 03820
(603) 742-1879
for Petitioners

April 10, 1989

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OPINIONS BELOW (correction)

The final decisions of tne N.H. Supreme Court in its docket numbers 88-274 and 88-261 are dated January 9, 1989, and these orders represents exhaustion of state remedies in these cases and are set forth at **A1** and **A12**. N.H. Sup. Court #88-274 is the outcome of N.H. Strafford County **Superior** Court # 85-E-155. Before N.H. Supreme Court # 88-274, there was N.H. Supreme Court # 87-363, derived likewise from N.H. Strafford County **Superior** Court 85-E-155, which was finally decided June 29, 1988. This order is set forth at A2. As N.H. Supreme Court # 88-274 and # 87-363 have the same basis as to facts, law, constitutional provisions, and participants, they must be joined and considered together, in order to have a sensible meaningful whole. As can be seen by reading the orders set forth at A1 and A2, there is no justification given for the actions, or better non-actions, of the N.H. Supreme Court in covering-up perjury, violations of federal and state statutes,

violations of the titles, rights, privileges, and immunities provided for by both the state and federal constitutions. The net effect of this cover-up is to effectively create a special body of law to be used against the petitioner and his mother, Olivette D. Hemon, against their interests separately and in common, thus violating the due process clause and equal protection of laws clause of the 14th Amendment of the U.S.Constitution. Another aspect of this case is on appeal here as U.S. Supreme Court # 88-1199, which see, docketed December 19, 1988.

JURISDICTION

This Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1257 as amended June 27, 1988. § 1257 relates to direct appeal from the New Hampshire Supreme Court to the U.S. Supreme Court:

" § 1257. State Courts; certiorari
(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the

SUPPLEMENT TO

REASON FOR GRANTING THE WRIT

Having discovered, that five more pages were permitted to the original petition, the petitioner is availing himself of the opportunity to expand on the final paragraph of **REASON FOR GRANTING THE WRIT**, Page 59.

The prepositional phrase " UNDER **COLOR OF STATE LAW** " has been stated several times within the context of this petition for writ of certiorari. This is because the prepositional phrase " **UNDER COLOR OF STATE LAW** ", and the source where it was first encountered, have greatly influenced the perception and analysis of the events and circumstances of this case for $3\frac{1}{2}$ years, and has therefore influenced the opinions, observations, thoughts, and feelings of the petitioner . The source was **SCREWS v. U.S.** 325 U.S. 91 and the opinion of Douglas J., in which Chief Justice, Mr. Justice Black and Mr. Justice Reed concur, and the opinion of Mr. Justice Rutledge, concurring in the result.

SCREWS v. U.S., supra, at page 109 gives a definition of " **UNDER COLOR OF STATE LAW** " citing UNITED STATES v. CLASSIC, 313 U.S. 299, 326, wherein the U.S. Supreme Court said:

"' **Misuse of power, possesed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken ' UNDER COLOR OF ' STATE LAW. '"**

SCREWS v. U.S., supra, at page 110, in defense of the holding of U.S. v. CLASSIC, supra,:

"...It followed the rule announced in EX PARTE VIRGINIA, 100 U.S. 339, 346, that a state judge who in violation of state law discriminated against negroes in the selection of juries violated the Act of March 1, 1875, 18 Stat. 336. It is true that that statute did not contain the words under "' color '" of law. But the Court in deciding what was state action within the meaning of the Fourteenth Amendment held that it was immaterial that the state officer exceeded the limits of his authority.'"...as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it '" 100 U.S. at p. 347. And see VIRGINIA v. RIVES, 100 U.S. 313, 321."

And further in SCREWS v. U.S., supra, at page 111:

"...It is clear that under 'color' of law means under 'pretense' of law. Thus the ambits

of officers in the ambit of their personal pursuits are plainly excluded. Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it."

The phrase **" whether they hew to the line of their authority or overstep it "** clearly describes the decision of the N.H. Strafford County Probate Court, in that it did not hew to the line of its authority and overstepped it, when in its decree of April 11, 1985, it granted the guardianship of person and estate of the petitioner's mother, Olivette D. Hemon, to the OPG in violation of N.H. RSA 547-B:3,II. (See **STATUTES INVOLVED,** Page 5 and See **SCHEMATIC OUTLINE OF HISTORY OF CASE, A61**). The N.H. Strafford County Probate Court did not hew to the line of its authority and overstepped it, when on May 25, 1988 it again denied the petitioner his right pursuant to N.H. RSA 547-B:3, II, supra, to be guardian of person and estate of his mother, Olivette D. Hemon as he and she desired. (See **A13** et seq.). The N.H. Strafford County Probate

Court went against the will of both the petitioner and his mother, and thereby " **UNDER COLOR OF STATE LAW** " deprived then both of due process, and discriminated against them as opposed to the OPG, violating their rights pursuant to the 14th Amendment of the U.S. Constitution. The N.H. Supreme Court in effect conspired to cover-up and protect the N.H. Strafford County Probate Court by its order of January 31, 1986 in its # 85-319 (See **A27** and See **SHEMATIC OUTLINE OF HISTORY OF CASE, A61**) saying " **Since the petitioner failed to preserve his right to appeal with respect to the decision of April 11, 1985...**", knowing full well, that it was not the petitioner who failed, but a misbehaving hedonistic attorney, who out of intentional irresponsibility and intentional negligence saw to it, that the appeal of the April 11 , 1985 decree was not preserved, perhaps even for reasons of personal profit and loyalty to the persons with whom she was friendly, namely the OPG personnel. The N.H. Supreme Court further

compounded the error in law and justice and in violation of the 14th Amendment rights of mother and son by its orders in its # 88-261 dated November 21, 1988 and January 9, 1989 with respect to appeal of the May 25, 1988 decree of the N.H. Strafford County Probate Court, supra. (See **A 59** and **A12**, and **SCHEMATIC OUTLINE OF HISTORY OF CASE, A62**). This is part of the subject matter of the instant petition for writ of certiorari here filed. The N.H. Supreme Court order of January 31, 1986, supra, ultimately led to the " **frivolous** " decision made by the N.H. Strafford County Superior Court in its order of October 21, 1987, (See **A8**) dismissing its # 87-E-125, thus ignoring the fraud and perjury in the case and covering this up, a decision supported by the N.H. Supreme Court, when it declined its # 88-074, which # 87-E-125 had become. (See **A56, A57, A21** and **SCHEMATIC OUTLINE OF HISTORY OF CASE, A62**). This became U.S. Supreme Court # 88-1199. The N.H. Supreme Court # 87-363 and # 88-274 are also a part of the instant petition.

SUPPLEMENTAL APPENDIX

to

PETTION FOR WRIT OF CERTIORARI
TO THE NEW HAMPSHIRE SUPREME COURT

SUPPLEMENTAL APPENDIX

to

PETTION FOR WRIT OF CERTIORARI TO THE NEW HAMPSHIRE SUPREME COURT

The page numbers of the supplemental appendix continue from those found in the **APPENDIX** of the instant petition, that is from **A20.** Hence the **SUPPLEMENTAL APPENDIX** begins at **A21.**

The material found in the **SUPPLEMENTAL APPENDIX** comes from the **APPENDIX** to U.S. Supreme Court # 88-1199, to which some of the citations of the instant petition were directed. These citations are of the form (See U.S. Supreme Court # 88-1199, **A9** et seq.) , an example found on page 44 of the instant petition.

To locate such a citation in the **SUPPLEMENTAL APPENDIX** add 20 to the page number cited, as for example in the above **A9** becomes **A29** in the **SUPPLEMENTAL APPENDIX.**

Additionally, at pages **A61** and **A62** is found **SCHEMATIC OUTLINE OF HISTORY OF CASE,** as an aid to overcoming the complications of this case and more easily seeing the relationships existing between the many parts.

(U.S. Supreme Court # 88-1199-A1)

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

88-074

In Case No. 88-074 Roland Hemon & a. Office of Public Guardian & a. the court upon September 23, 1988 made the following order:

Plaintiff's petition for entrance is denied.

Distribution:

Strafford County Superior Court (2)

John D. MacIntosh, Esquire

Gerard A. Spegman, Esquire

Donna R. Craig, Supreme Court

Mr. Roland E. Hemon

File

(U.S. Supreme Court # 88-1199-A2)

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

1985 TERM — STRAFFORD COUNTY

MAY SESSION — PROBATE COURT

In Re : Olivette Hemon

MOTION TO EXTEND TIME IN WHICH TO FILE APPEAL UNTIL TIME OF DISPOSITION ON PENDING MOTIONS

NOW COMES Roland Hemon, through counsel, cross petitioner in the above matter, GDN #72 and states:

1. Trial was conducted in this matter on several days concluding January 21, 1985, Strafford County Probate Court.

2. After January 21, 1985, and submission to the Probate Court for decision on the merits, several post-trial motions relating to the proceeding were filed by the parties. Various cross-motions and objections were filed in response to the motions.

3. The following motions, objections and cross-motions relate to final post-trial

disposition of the case, and have not yet been heard or disposed of in any fashion:

Motion to Preserve Assets and for Accounting dated 2/13/85
Objection to Motion to Preserve Assets and for Accounting and Cross Motion to Compel dated 2/25/85
Objection to Cross Motion to Compel dated 3/8/85
Motion for Release of Funds dated 3/8/85
Motion to Inform Court of Assets dated 3/8/85
Motion to Remove Temporary Guardian of Person and Estate dated 3/11/85
Objection to Motion for Release of Funds dated 3/19/85
Objection to Motion to Inform Court of Assets dated 3/20/85
Motion to Inform Court and to Request Immediate Consideration of All Matters Pending Before the Court in this Case dated 3/14/85
Motion for Extension of Temporary Guardianship of Person and Estate and Objection to Motion to Remove Temporary Guardian dated 3/14/85
Objection to Motion to Remove Temporary Guardian of Person and Estate dated 3/19/85
Objection to Motion for Extension of Temporary Guardianship dated 3/25/85

4. On April 11, 1985 this Court issued its Decree resulting from the guardianship proceedings concluded on January 21, 1985. A portion of said Decree provides:

" Accordingly, if a verbatum transcript of the record would contradict any rulings of this decree, the contradiction is based upon testimony or statements which the court regarded as not being credible and, if otherwise, it is considered that the error is

harmless based upon its irrelevancy or immateriality. If, in any particular, the court is wrong, any party to this proceeding may have fourteen (14) days from the issuance of this decree to present a specification and record of the transcript which supports his, her or their request for any particular finding of fact or ruling of law. In addition to the pertinent transcript page(s), the specification shall include specific page reference(s) for each request. The court will then review the submission and if warranted, restate its finding. The opportunity so afforded does not encompass leave to expand upon requests or to make new or additional requests."

5. Movant herein filed Motion to Stay Effective Date of Decree dated April 11, 1985 because transcripts had not yet been typed and completed by the Court Reporter. Movant sought the Probate Court's Order Staying the Effective Date of its Decree until 14 days after the parties had received the transcript. Said Motion has not yet been heard or acted upon, and two objections thereto are on record.

6. April 18, 1985 this court issued its Decree which sua sponte deleted the above language from the Order, and otherwise reaffirming the previous Decree.

7. **Counsel for movant was out of the country and on vacation from April 24 - May 12, 1985 inclusive.**

8. The transcript was not completed until May 10, 1985.

9. Until such time as all pending motions, objections and cross-motions are heard and determined, the case is not ripe for appeal.

WHEREFORE, movant prays:

A. That this Honorable Court extend the time in which to file appeal until such time as all pending motions, objections and cross-motions have been determined;

B. For such other relief as is just.

Respectfully submitted,

Dated: May 16, 1985 Signed:

Roland E. Hemon and

Terrie Harman
HARMAN LAW OFFICES
385 Islington St.
Portsmouth, N.H. 03801

(U.S. Supreme Court # 88-1199-A6)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Motion was mailed to James Koromilas, Esquire, John Lyons, Esquire, Joan Gilmore, Esquire, Anthony Hartnett, Esquire and the Strafford County Probate Court.

Signed:

Terrie Harman

(U.S. Supreme Court # 88-1199-A7)

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

85-319

In Case No. 85-319 In Re Olivette D. Hemon the court upon January 31, 1986 made the following order:

" Office of Public Guardian's motion for summary affirmance is **denied**; motion for ruling on motion for summary affirmance is moot. **Since the petitioner failed to preserve his right to appeal with respect to the decision of April 11, 1985 on the merits**, the only decision below preserved for appeal is that of June 11, 1985. Petitioner does not raise any questions alleging that the probate court abused its discretion; therefore, the decision below of June 11, 1985, is summarily affirmed in accordance with Rule 25(1)(a)."

A TRUE COPY

ATTEST signed Carol A. Belmain,

Deputy Clerk of the N.H. Supreme Court

(U.S. Supreme Court # 88-1199-**A8**)

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

87-E-125

Hemon v. Office of Public Guardian et al.

Order on Motion to Dismiss:

" The issues raised in this petition have been determined adversely to the plaintiff. I find the petition is **frivolous.** The guardianship ruling of April 11, 1985 **was not appealed** and is final. The motion is granted.

I order the plaintiff to pay attorne;y fees in the amount of $500.00 under Superior Court rule 59. Payment shall be made direct to attorney MacIntosh within seven days of the date of this order.

Date: October 21, 1987

Signed:

Joseph P. Nadeau

Presiding Justice

(U.S. Supreme Court # 88-1199-A9)

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. SUPERIOR COURT

85-E-155

OLIVETTE D. HEMON by and through THE OFFICE OF PUBLIC GUARDIAN v. ROLAND E. HEMON

ORDER

Based upon evidence presented at trial, the verdict in favor of plaintiff dated July 2, 1987, and the equity powers of this Court, it is hereby ordered, adjudged and decreed:

1. Defendant shall deliver forthwith three quiltclaim deeds transferring to his mother, Olivette Hemon, sole title to the real estate described below. Defendant shall also be responsible for discharging any and all liens or other encumbrances on the properties which may have occurred after December 30, 1983. Said real estate includes:

A. Property and buildings located in York Harbor, Maine (Knoll Crest) as described in Book 3228, Pages 33-36 at the York County, Maine Registry of Deeds;

B. Property located in Brevard County, Florida as described in Book 2500, Page 1967 of the public records of Brevard County, Florida;

C. Property located in Putnam County, Florida as described in Book 311, Page 1758 of the public records of Putnam County, Florida.

2. Defendant shall forthwith transfer sole possession and title to plaintiff of any and all personal property located at Knoll Crest, York, Maine, including but not limited to furniture, carpets, and rugs, books, linens, curtains, pictures, silverware and dishes.

3. Defendant shall transfer possession to plaintiff of all stocks, bonds, bank accounts, promissory notes and negotiable instruments in the name of Olivette Hemon, individually or jointly with the defendant, as of the date of this order.

4. Defendant shall forthwith deliver to plaintiff sole title and possession of plaintiff's Pacer automobile.

5. Plaintiff shall be entitled to recover from

defendant her taxable costs and expenses of this litigation in accordance with RSA 525:13-14. Plaintiff shall present to the Court and defendant an itemization of such expenses and costs for approval by the Court and payment by the defendant.

6. In the event that defendant fails to comply with any of the orders as set forth above, he may be found, upon notice of hearing, to be in contempt of court. Until the defendant complies with the orders of this Court, plaintiff shall continue to have lien on properties owned by the defendant at 10 Oak Street in Dover, New Hampshire, and Freedom, New Hampshire. In the event that defendant does not fully satisfy the order, a writ of execution will issue on said properties in order to satisfy judgment.

7. In consideration of the services rendered by the defendant to Olivette Hemon as regards her real estate and personal needs, the Court declines to require an accounting of the

income and expenses relating to Knoll Crest from December 30, 1983.

8. In further consideration of the relationship between the defendant and Olivette Hemon, the Court declines to require the plaintiff to account for the funds representing the value of certificates of deposit transferred to Roland Hemon between January 1984 and August 1984.

9. Title to stocks, bonds, bank accounts, promissory notes and negotiable instruments currently in the name of the defendant only shall remain exclusively with him.

10. Title to all personal property in the possession of the defendant is awarded exclusively to the defendant.

Dated: 7/23/87

Signed:

Joseph P. Nadeau

Presiding Justice

(U.S. Supreme Court # 88-1199-**A13**)

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIAN FOR OLIVETTE HEMON

GDN # 72

From the transcript of proceedings of August 21, 1984, an ex-parte hearing at which Olivette Hemon did not attend, not having been served. An example of perjury committed by Heloise Davis at this hearing is to be found on pages 51 and 52 of the transcript:

"...And this is when I presently came involved and got her an appointment for her with Dr. Reed and this is when she was found to have Parkinsons..."

Heloise Davis was along with Armand Hemon a petitioner for guardianship of their mother, Olivette Hemon, against her will and desire.

(U.S. Supreme Court # 88-1199-A14)

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. I, Page 130, it is found that Heloise Davis contradicts unequivocally her testimony under oath given at the hearing of August 21, 1984:

"Q. How many times have you met Dr. Susan Reed?
A. I have never met Dr. Reed.
Q. Do you know where her office is?
A. I have no idea.
Q. You've never seen her?
A. No.
Q. Your testimony on August 21st, 1984, and this is when I presently became involved and got her an appointment for her with Dr. Reed.
A. I did not get her an appointment with Dr. Reed, Bea Houle did.
Q. Well, your testimony on the 21st says that you got the appointment with Dr. Reed, is that right or wrong?
A. That's wrong..."

Heloise Davis thus shows either having a poor memory and thus failing to meet the requirement for a credible witness, or having a good memory and having wilfully and intentionally committed perjury. Either way,

since Heloise Davis is a key participant and petitioner, all of the proceedings are ill founded and ill grounded, and compromised. Though the complaints with respect to this have been frequent in the state courts, everything has been done to cover-up and protect this person, and all actions, decrees, rulings, orders etc. of the state courts have this kind of credibility as foundation and legitimacy, and as justification for violations of many state statutes and the state constitution, as well as federal statutes and the federal constitution. Of greater import is the violation of the basic rights of Olivette D. Hemon, who as a result of all of these proceedings carried on " **UNDER COLOR OF STATE LAW** " was brutalized psychologically and the quality of her life destroyed. Injurious repercussions fell on the petitioner, Roland E. Hemon, in the case before this Court as well, because of his self-sacrificing support of his mother, Olivette D. Hemon, the co-petitioner.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. I, Page 190, we find the testimony of Beatrice Houle, one of the respondents of this case. This testimony confirms the fact, that Heloise Davis, another respondent, did indeed perjure at the ex-parte hearing of August 21, 1984, when she said under oath, that she had made the appointment with Dr. Reid. It should be noted, that Beatrice Houle was present at the hearing, when this statement was made by Heloise Davis, and made no attempt to correct this false testimony at this time, that is August 21, 1984. Now in January of 1985 we have:

" Q. There's a notation at the top -- I'm not asking you to recognize the writing, but the notation at the top of the page is 5/4/83, would that be the first appointment with Dr. Reed?
A. I imagine.

Q. Do you think it was earlier than that?
A. I can't say, I really don't ---
Q. Okay. So it was at least May 4, 1983?
A. Yeah.
Q. Okay.
A. It was the first appointment she had with Dr. Reed, because I made the appointment.
Q. And Roland went with you to that appointment?
A. Oh, yes.
Q. Did you ever take Olivette to an appointment alone?
A. No. He always made sure he came with me.
Q. Was he concerned about her medical condition, do you think?
A. He wanted to know what -- what the story was..."

(U.S. Supreme Court # 88-1199-**A18**)

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. III, Page 538, we have testimony of Heloise Davis, which states even after hearing respondent Beatrice Houle say otherwise, that the petitioner in this case, Roland E. Hemon, only participated at the second appointment with Dr. Reid. In spite of the fact, that the 2 participants in the Dr. Reid affair both agree, that the petitioner Roland E. Hemon's participation was every time, Heloise Davis, who did not participate, who was not consulted, and who lived 200 miles away, insists only the second time. Nothing so underscores the lack of credibility of this witness and petititioner for guardianship as the fact, that under the circumstances, she refuses to recognize the truth and tries to circumvent it, that truth being, that the petitioner, Roland E. Hemon,

was interested in the welfare of his mother, and did actively do something about it. This of course was in to order to protect her and the respondent Armand Hemon's petition for guardianship, which depended upon their allegations, that the petitioner, Roland E. Hemon, was ignoring the needs of his mother, the co-petitioner, Olivette D. Hemon. The testimony of the respondent Heloise Davis:

" Q. In fact, is it true today that Bea Houle and Roland Hemon took Olivette to see Dr. Reed.
A. I spoke to Bea about that and she said that she had taken my mother by herself the first time and Roland went the second time.
Q. But she told us on January 7th, in this court they had both gone to the doctor every time she ---
A. I just told you that the second time.
Q. Did you hear my question?
A. That I had said that Bea Houle -- Roland went with Bea Houle to Dr. Reed's.
Q. That's right.
A. And I said the first time she went alone, the second time Roland went with her.
Q. But you heard Bea Houle tell us here in this courtroom that Roland and Bea went with Olivette both times, did you hear Bea Houle ---
A. Not both times, no..."

It should be noted, that Heloise Davis is contradicting a person, whom she asked to testify in her behalf and her cause.

(U.S. Supreme Court # 88-1199-**A20**)

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF OLIVETTE HEMON

GDN #72

From the transcript of proceedings of October 26, 1984, Page 156, the respondent here, Armand Hemon, and petitioner in the above captioned matter is found to have testified as follows:

"...She (Olivette Hemon) willing came over to my car, where my car was. I was standing outside. She gave me one big hug and we stood there for a while and we requested that since I was taking her back up to the North Country,..."

The Newington Police Log, infra, contradicts this statement of Armand Hemon and asserts the contrary fact, that it was contrary to her will, that she wanted to stay with son #2, defined as Roland E. Hemon, the petitioner here. Further, the phrase " taking her back to the North Country " is inaccurate as her home for 34 years was 200 miles from the " North Country, namely York Harbor, Maine, and Dover, N.H.. If the petitioner's home had been in the

North Country, then proper venue for the guardianship proceedings would have been there instead of the Strafford County Probate Court, or even more appropriately the York County Probate Court in Alfred, Maine, as she had lived uninterruptedly since 1950 in York Harbor, Maine, in her home she called Knollcrest. In no way could the North Country (which refers to northern Vermont) be considered a place she had left and to which she was being returned, and thus justify the statement made by the respondent Armand Hemon, " ...since I was taking her back up to the North Country...".

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF OLIVETTE HEMON

GDN #72

From the transcript of proceedings of October 26, 1984, Page 167, the respondent here, Armand Hemon, and petitioner in the above captioned matter is found to have testified as follows under cross-examination:

" Q. Looking back to the Mrs. and Me incident, isn't it true that Olivette refused to ---
A. The Mrs. and Me.
Q. This is the ---
A. Oh, all right. The restaurant.
Q. The restaurant.
A. Yes.
Q. And do you know where that is?
A. Yes, it's on Route 1A, probably four or five miles down from York, York Village.
Q. And isn't it true that at the Mrs. and Me, Olivette refused to go with you?
A. She initially did, yes. "

The above testimony refers to an incident, that occurred about an hour before the incident of A20. Thus the respondent Armand Hemon admits, that at Mrs. and Me the petitioner Olivette D. Hemon did **NOT** want to go with him, while asserting, that one hour later at the Newington Parking lot she did

want to go with him, which assertion is contradicted by Officer W. Cronin of the Newington Police Department, who maintains in the police log, infra, that at the Newington Parking Lot she still did **NOT** want to go with the respondent Armand Hemon. The petitioner being at Mrs and Me and at the Newington Parking Lot knows, that the petitioner Olivette D. Hemon was consistently adamant in **REFUSING** to go with the respondent Armand Hemon.

Armand Hemon thus shows either having a poor memory and thus failing to meet the requirement for a credible witness, or having a good memory and having wilfully and intentionally committed perjury. Either way, since Armand Hemon is a key participant and initial petitioner for guardianship along with the co-respondent Heloise Davis, all of the proceedings are ill founded and ill grounded, and compromised. Though the complaints with respect to this have been

frequent in the state courts, everything has been done to cover-up and protect this person, and all actions, decrees, rulings, orders etc. of the state courts have this kind of credibility as foundation and legitimacy, and as justification for violations of many state statutes and the state constitution, as well as federal statutes and the federal constitution. Of greater import is the violation of the basic rights of Olivette D. Hemon, who as a result of all of these proceedings carried on **" UNDER COLOR OF STATE LAW "** was brutalized psychologically and the quality of her life destroyed. Injurious repercussions fell on the petitioner, Roland E. Hemon, in the case before this Court as well, because of his self-sacrificing support of his mother, Olivette D. Hemon, the co-petitioner.

POLICE DEPARTMENT

NEWINGTON, N.H. 03801

DAILY REPORT

DATE	DAY	WEATHER
8/30/84	THURSDAY	Clear, Humid, Hazy, Hot

---

2. ..." and Brother #2: **ROLAND E. HEMON DOB: 05-01-26 of Oak St. Dover, N.H. who had physical Custody of Mrs. Hemon. Mrs. Hemon, however, wanted to stay with Brother #2..."**

Officer Cronin was the policeman involved, and the policeman, who made the report found in the police log of 8/30/84.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. II, Page 360, we have testimony of Charles Hemon, son of the respondent Armand Hemon, describing the aftermath of the involuntary custodianship thrust upon the petitioner Olivette D. Hemon by her son, the respondent Armand Hemon:

" A. No. She was just sitting in the front seat of the car when I saw her.
Q. Did she ask any questions?
A. Why everything had to be so complicated.
Q. Anything else?
A. No. Just general questioning the whole situation, you know, series of events, why they had to be.
Q. Why they had to be?
A. Why they had to be going on. Why it had to be that way.
Q. Did she appear to understand what was going on?
A. No.
Q. Did she appear to be upset with what was going on?
A. Yes....
Q. You can answer that question. Was she upset?
A. Yes.
Q. Did she say why?
A. Yes, because everything just seem, I

guess, it appeared to her, that her whole life was crumbling and everything was mismatched."

This testimony by the son of the respondent Armand Hemon denies the hugs and kisses and joyful aspects testified to by the respondent Armand Hemon as he took possession of his mother, the petitioner Olivette D. Hemon against her will, **UNDER COLOR OF STATE LAW**, and violating federal kidnap statutes, on August 30, 1984. The petitioner Olivette D. Hemon was not happy and feeling liberated from an oppressor. Her upset confirms the involuntary nature of the incident. In the morning the petitioner, Olivette D. Hemon was happy and looking forward to a nice long week-end at North Conway, N.H.. A motel , Green Granite, had the reservations for both petitioners, Olivette D. Hemon and Roland E. Hemon. The end of the day found her in captivity where " her whole life was crumbling and everything was mismatched. "

The abject lack of credibility of the respondent, Armand Hemon, is further

demonstrated by the testimony of his son, Charles Hemon, and yet it is this person along with the respondent Heloise Davis, who through misleading the legal system, have produced events and proceedings so devastating to the lives of both the petitioners, Olivette D. Hemon and Roland E. Hemon. Their lack of credibility does not excuse the state legal system, once involved, for violating its own state statutes, court rules, and the state and federal constitutions. Had the state legal system addressed the credibility problem in the beginning, then pernaps it would not have found it necessary to engage in cover-up to extent it has occurred. The state legal system can not say it did not know, for the petitioner, Roland E. Hemon has on every occasion pointed to this credibility and perjurous aspect.

(U.S. Supreme Court # 88-1199-A29)

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. I, Pages 190, 191, and 192, we have testimony of Beatrice Houle, one of the respondents of the instant case, describing her observation of the aftermath of the involuntary custodianship thrust upon the petitioner Olivette D. Hemon by her son, the respondent Armand Hemon:

" Q. You say the last time you saw Olivette was at the end of August, 1984, when Armand brought her over?
A. Right.
Q. After he had acquired custody of her?
A. Right.
Q. And she was not looking so well at the time?
A. She was looking horrible. So ill.
Q. What about her sense of self. How did she perceive herself?
(Objection and rephrase).
Q. You got a good chance to see her?
A. Oh, I sure did. Poor thing. She couldn't ---
Q. Did she appear to be ---
A. -- she couldn't even come in the house. We had to -- I had -- she couldn't even make it to the house. I had to put her on the picnic table on the lawn.

Q. Did she appear to be afraid?
A. She was just a confused, ill old lady. She was a very ill woman.
Q. Did it appear to you that she was afraid?
A. Afraid of what?
Q. Just afraid? Just afraid. Was her demeanor that of fear?
A. No, confusion.
Q. Confusion. Did she ---
A. Complete confusion.
Q. Did she say why she was confused?
A. When you're as confused as she was, I don't think you realize you're confused.
Q. What about not being able to walk, do you mean she couldn't walk at all?
A. No, she could not walk. Her -- son Armand and his son helped her out of the car and they brought her to the -- they brought her to the table.
Q. Did she appear to be happy?
A. How could she be happy, she was so sick..."

This testimony of the respondent Beatrice Houle, niece of the petitioner Olivette D. Hemon, concerning the aftermath of the respondent Armand Hemon having taken possession of his mother against her will, as is recorded in the NEWINGTON POLICE LOG, described graphically the breakdown of the petitioner Olivette D. Hemon as a result of the events of August 30, 1984, namely her abduction **UNDER COLOR OF STATE LAW.** Before

the abduction, the petitioner Olivette D. Hemon was accustomed to walking unaided and unsupervised a mile in about 25 minutes. This testimony of the respondent Beatrice Houle along with that of Charles Hemon, shows how crushed the petitioner Olivette D. Hemon was by the recent events, which ended her freedom and brutalized her psychologically to the point of physical collapse. The morning of August 30, 1984, the petitioner Olivette D. Hemon was cheerful and happy at the prospect of a long Labor Day week-end in North Conway, N.H.. Little did the petitioners Olivette D. Hemon and Roland E. Hemon realize as they left for the long week-end, the disastrous end of that day.

This testimony by the respondent Beatrice Houle denies the hugs and kisses and joyful aspects testified to by the respondent Armand Hemon as he took possession of his mother, the petitioner Olivette D. Hemon against her will, **UNDER COLOR OF STATE LAW**, and violating

federal kidnap statutes, on August 30, 1984. The petitioner Olivette D. Hemon was not happy and feeling liberated from an oppressor. Her upset confirms the involuntary nature of the incident. The end of the day found her in captivity where " her whole life was crumbling and everything was mismatched. ", as described graphically by her grandson, Charles Hemon.

The abject lack of credibility of the respondent, Armand Hemon, is further demonstrated by the testimony of his cousin the respondent Beatrice Houle, and yet it is this person along with the respondent Heloise Davis, who through misleading the legal system, have produced events and proceedings so devastating to the lives of both the petitioners, Olivette D. Hemon and Roland E. Hemon. Their lack of credibility does not excuse the state legal system, once involved, for violating its own state statutes, court rules, and the state and federal constitutions. Had the state legal system

addressed the credibility problem in the beginning, then perhaps it would not have found it necessary to engage in cover-up to extent it has occurred. The state legal system can not say it did not know, for the petitioner, Roland E. Hemon has on every occasion pointed to this credibility and perjurous aspect of the case, which thoroughly undermines the grounds that the N.H. state courts used as a basis for proceeding. Hence everything that happened to the petitioners Olivette D. Hemon and Roland E. Hemon was **UNDER COLOR OF STATE LAW**, was oppressive and tyrannous, most certainly in violation of the due process clause and equal protection of laws clause of the 14th Amendment of the U.S. Constitution, in violation of 18 U.S.C. §§ 241 and 242 of the U.S. criminal code, and 18 U.S.C. §§ 1201(a)(1) and 1201(b), kidnaping.

The examples cited in this Appendix of perjury and misleading statements are not the only such statements in the record. They are

representative of the testimonial output of the participants, who so drastically devastated the life of the petitioners Olivette D. Hemon and Roland E. Hemon.

(U.S. Supreme Court # 88-1199-**A34**)

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

March 1, 1988

Mr. Roland E. Hemon
10 Oak St.,
Dover, N.H. 03820

John D. MacIntosh, Esquire
Epstein & Burke
16 Low Avenue
Concord, N.H. 03301

Gerard A. Spegman, Esquire
P.O. Box 778
Portsmouth, N.H. 03801

Re: 88-074 Roland E. Hemon, for himself & Olivette D. Hemon, his mother v. Office of Public Guardian, Armand Hemon, Heloise Davis, & Beatrice Houle

On February 26, 1988, your filing in refrence to the above-captioned matter was received in the clerk's office and has been docketed as case number 88-074. A court order will be issued in reference to acceptance or declination after the screening process is completed.

Any subsequent correspondence or pleadings which are filed with the Supreme Court by any party in the case must have the

correct supreme court docket number, or assessments will be levied. Please refer to Rule 26(8), effective September 1, 1987.

Very truly yours,
Signed:
Carol A. Belmain
Deputy Clerk

Distribution: Addressees
Strafford County Superior Court
Howard J. Zibel, Deputy Clerk
File

(U.S. Supreme Court # 88-1199-**A36**)

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 88-074 Roland E. Hemon & a. v. Office of Public Guardian the court upon June 29, 1988 made the following order:

"Notice of Appeal is declined. See Rule 7(1)."

Distribution:

Mr. Roland E. Hemon
Strafford County Superior Court (2)
John D. MacIntosh, Esquire
Gerard A. Spegman, Esquire
Donna R. Craig, Supreme Court
File

Ralph H. Wood
Clerk

(U.S. Supreme Court # 88-1199-A37)

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 88-074 Roland E. Hemon & a. v. Office of Public Guardian the court upon July 29, 1988 made the following order:

" Plaintiff's motion for reconsideration is denied."

Distribution:

Roland E. Hemon
John D. MacIntosh, Esquire
Gerard A. Spegman, Esquire
Strafford County Superior

Ralph H. Wood
Clerk

(U.S. Supreme Court # 88-1199-**A38**)

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

August 10, 1988

Mr. Roland E. Hemon
10 Oak Street
Dover, N.H. 03820

Re: 88-074 Hemon v. Office of Public Guardian

Dear Mr. Hemon:

On August 1, 1988, this office received from you a motion for summary reversal in the above-captioned matter. This obviously crossed in the mail with the Court's denial of your motion for reconsideration, which was issued on July 29, 198^. At the time of the filing of your motion for summary reversal, the court had made a final determination in this case; therefore, the motion for summary reversal will not be distributed to the court, and you will receive no ruling thereon.

Very truly yours,
Signed:
Howard J. Zibel
Deputy Clerk

cc. John D. MacIntosh Esquire
Gerard A. Spegman, Esquire

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 88-261 In re. Guardianship of Olivette Hemon the court upon November 21, 1988 made the following order:

" Roland E. Hemon's motion for summary reversal is denied. Roland E. Hemon's motion to stay is denied. Office of Public Guardian's motion to strike memorandum is denied. Notice of Appeal is declined. See Rule 7(1).

Distribution:
Roland E. Hemon
John MacIntosh, Esq.
John Lyons, Esq.
Anthony Hartnett, Esq.
Strafford County Probate Court
Donna R. Craig, Supreme Court
File

Ralph H. Wood
Clerk

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 87-363 Olivette Hemon & a. Roland E. Hemon the court upon March 30, 1988 made the following order:

Case shall be designated as Olivette D. Hemon by & through of the office of public guardian v. Roland E. Hemon. See Rule 7(5). Plaintiff's request is dismissed as untimely filed. See Rule 7(5). Plaintiff's request for sanctions and defendant's motion for direction are denied.

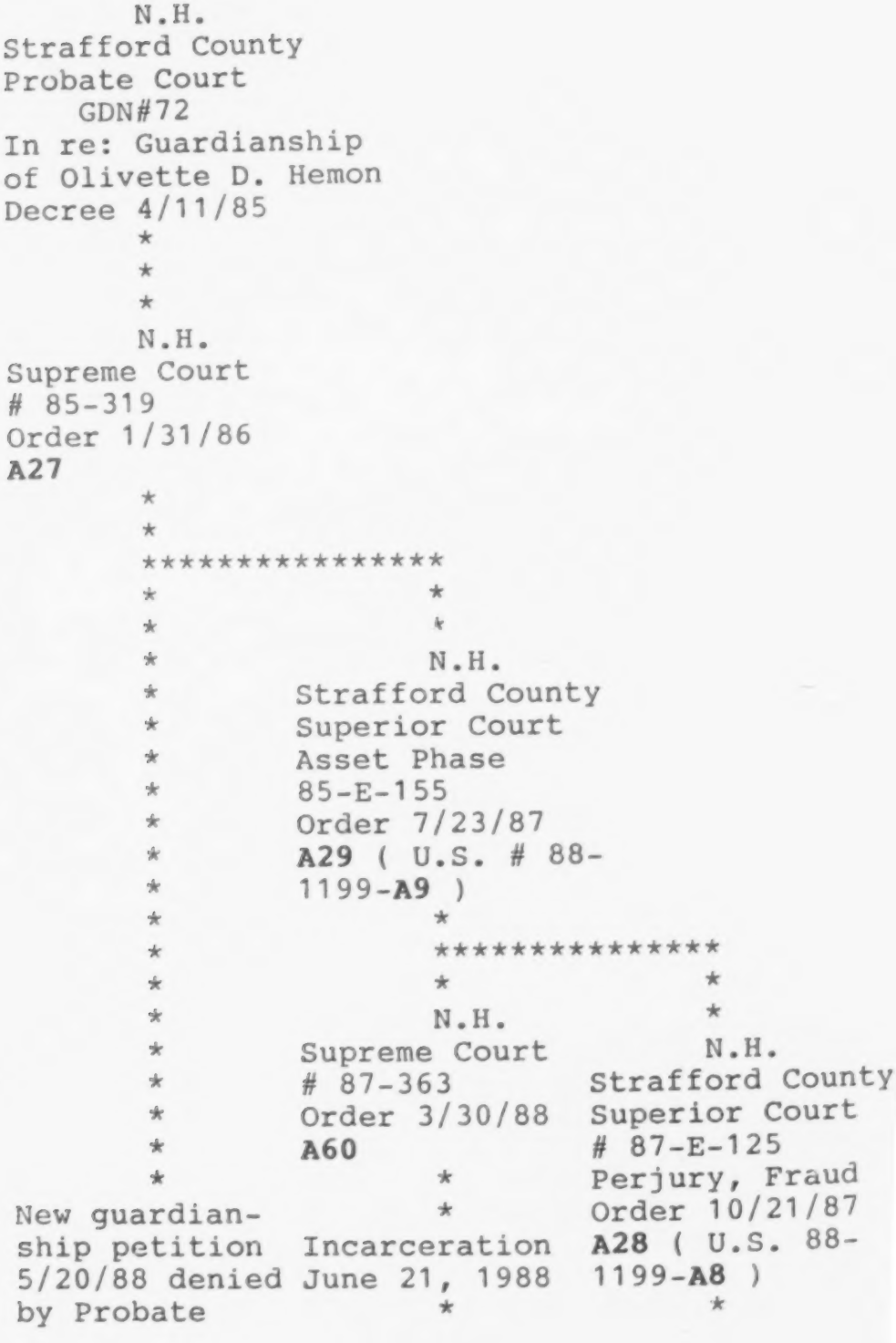
Defendant's notice of appeal and amendments thereto are declined. See Rule 7(1).

Defendant's motions for contempt and stay are denied. Office of Public Guardian's motion to sever appeal of Strafford County Superior Court Case No. 87-E-125 is moot since the direct appeal of that case has been docketed as No. 88-074 in this court.

Distribution: John D. MacIntosh, Esq.; Roland E. Hemon, Esq.; Strafford County Superior Court; Donna R. Craig, Supreme Court; File.

Signed: Ralph H. Wood, Clerk

SCHEMATIC OUTLINE OF HISTORY
OF CASE



Court 5/25/88
A13

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N.H.
Supreme Court
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Reconsideration
Order 1/9/89
A12

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The above respectfully submitted,

DATE: April 25, 1989 Roland E. Hemon
Roland E. Hemon, Pro se

AFFIRMATION

STATE OF NEW HAMPSHIRE, STRAFFORD COUNTY

I hereby certify that the above-named Roland E. Hemon did personally appear and made solemn oath that the statements contained in **SUPPLEMNT TO PETITION FOR WRIT OF CERTIORARI TO THE NEW HAMPSHIRE SUPREME COURT** filed with the U.S. Supreme Court are true to the best of his knowledge. I certify to his signing of the **CERTIFICATE OF SERVICE**, as well.

DATE: April 25, 1989 Helen F. Futch
Notary Public

HELEN F. FUTCH, Notary Public
My Commission Expires June 13, 1989

CERTIFICATE OF SERVICE

I hereby certify, that pursuant to U.S. Supreme Court Rule 28.3, three copies of this SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI have been mailed to the respondent Office of Public Guardian, 6 White St., Concord, N.H. 03301, Tel. (603) 224-8041; Atty. Anthony Hartnett, Merchants Building, Dover, N.H. 03820, Tel. (603) 749-2225; Atty. John Lyons, P.O. 477, Portsmouth, N.H. 03801, Tel. (603) 436- 6500.

DATE: April 25, 1989 Roland E. Hemon
Roland E. Hemon, Pro se